LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT,

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

FILED APRIL 28, 1955.

JURISDICTION NOTED OCTOBER 10, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT,

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, ETC.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

INDEX

	Original	Print
Record from the United States District Court for the Southern District of Illinois	1	1
Indictment	3	1
Transcript of docket entries	12	7
Verdicts	50	11
Motion of defendant, Jack Green, in arrest of judgment	63	12
Memorandum opinion, Adair, J.	69	14
Order on motions in arrest of judgment	74	17
Notice of appeal to the Supreme Court of the United States	77	18
Clerk's certificate (omitted in printing)	102	
Order noting probable jurisdiction	103	19

1-3 [File endorsement omitted]

No Prc. Pro. John B. Stoddart, Jr., U. S. Attorney

In the United States District Court, Southern District of Illinois
At the June Term thereof, A. D. 1953.

Docket No. 5236

VIO: Sec. 1951 Title 18 USC, Interference with Commerce by Threats and Violence

UNITED STATES OF AMERICA

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS; A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

SOUTHERN DISTRICT OF ILLINOIS,
Southern Division, ss.:

INDICTMENT—Filed December 17, 1953

(Bail $2500.00 for Green)

The grand jury charges:

Count One

That on or about, to wit, April 13, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to
4 obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Arthur W. Terry, Jr., then doing business under the name, style

and description of Terry Engineering Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Arthur W. Terry, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Arthur W. Terry, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Arthur W. Terry, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Arthur W. Terry, Jr. and his employees and agents then and there being, in violation of Section 1951 of Title 18, United States Code.

Count Two

That on or about, to wit, March 26, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS; A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Ralph Wright, Jr., then doing business under the name, style and description of Midway Excavating Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Ralph Wright, Jr., to wit, his money, in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Ralph Wright, Jr. in the execution of his said contract

for maintenance work on said levee, the attempted obtaining of said property from said Ralph Wright, Jr., as aforesaid being then intended to be accomplished and accomplished with the consent of said Ralph Wright, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Ralph Wright, Jr., and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

6

Count Three

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois, and within the jurisdiction of this court, did unlawfully and wilfully, in furtherance of a plan and purpose to commit the offense hereinbefore charged in Count One of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count One incorporated in this Count Three of this Indictment with the same force and effect as though the tenor of the same were here repeated, did commit and threaten physical violence to the person and property of the said Arthur W. Terry, Jr., then and there being, all with the intent and purpose of obstructing, delaying and affecting commerce; to wit, interstate commerce; and the movement of articles and commodities in such commerce as aforesaid; all in violation of Section 1951 of Title 18, United States Code.

Count Four

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS' UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois, and within the jurisdiction of this court, did unlawfully and wilfully, in furtherance of a plan and purpose to commit the offense hereinbefore charged in Count

7 Two of this Indictment, the allegations with respect to which said offense are herein by this reference to said Count Two incorporated in this Count Four of this Indictment with the same force and effect as though the tenor of the same were here repeated, did

commit and threaten physical violence to the person and property of one Frank P. Lühring, then and there an employee of the said Ralph Wright, Jr., and to the property of said Ralph Wright, Jr., then and there being; all with the intent and purpose of obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce as aforesaid, all in violation of Section 1951 of Title 18, United States Code.

Count Five

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully and wilfully commit and threaten physical violence to the person and property of one Arthur W. Terry, Jr., in furtherance of a plan and purpose of said Defendants to obstruct and affect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce and to attempt so to do, by extortion, that is to say, by attempting to obtain from said Arthur W. Terry, Jr., his property, to wit, his money, with his consent, by the wrongful use, in manner and form aforesaid, by said Defendants, of actual and threatened force, violence and fear, to the person of said Arthur W. Terry Jr.; in violation of Section 1951, Title 18, United States Code.

8

Count Six

That JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully threaten physical violence to the person of one Frank P. Lühring, then and there an employee of another, to wit, Ralph Wright, Jr., in furtherance of a plan to obstruct and affect commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, and to attempt so to do by extortion, that is to say, by attempting to obtain the property, to wit, the money of said Ralph Wright, Jr., with his consent, by the wrongful use, that is to say, the use in manner and form afore-

said by said Defendants, of threatened force, violence and fear, to the person of said Frank P. Lubning, in violation of Section 1951, of Title 18, United States Code.

Count Seven

That on or about, to wit, April 13, A. D. 1953, at, to wit, Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did then and there unlawfully commit and threaten physical violence to the person of one Arthur W. Terry, Jr., and commit and threaten to commit acts of physical violence to the property of said
9 Arthur W. Terry, Jr., then and there being, all in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce as that term is defined in Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion; all in violation of Section 1951, Title 18, United States Code.

Count Eight

That on or about, to wit, March 26, A. D. 1953, at, to wit, Chain of Rock Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, JACK GREEN and GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, did then and there unlawfully threaten physical violence to the person of one one Frank P. Lubning, and did threaten physical violence to the property of one Ralph Wright, Jr., then and there being, all in furtherance of a plan and purpose of said Defendants to obstruct, delay and affect commerce, as that term is defined in Section 1951 of Title 18 of the United States Code, to wit, interstate commerce, and the movement of divers articles and commodities in such commerce by extortion, that is to say, by means of obtaining the property, to wit, the money of said Ralph Wright, Jr., with his consent, induced and brought about by the wrongful use, to wit, the use in violation of Section 1951 of Title 18, United States Code, of threats of force, violence and fear, so made as aforesaid by said Defendants to said Frank P. Lubning; all in violation of Section 1951, of Title 18, United States Code.

10-13

Count Nine

That JACK GREEN and GENERAL LABORERS LOCAL No. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA, hereinafter called the Defendants, on or about, to wit: the first day of January, A. D. 1953, and for a long period of time prior thereto, and continuously thereafter from that date up to and including the date of the return of this indictment, at, to wit, the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, did unlawfully, wilfully and knowingly conspire, that is to say, did combine, confederate, arrange and agree together, and with each other, and with divers other persons whose names are to the grand jurors unknown, to commit, in said Southern Division of the Southern District aforesaid, divers offenses in violation of the provisions of Section 1951 of Title 18, United States Code, by obstructing, delaying and affecting commerce, to wit, interstate commerce, and the movement of articles and commodities in such commerce, by extortion, and to attempt so to do and to commit and threaten physical violence to divers persons and the property of such persons, in furtherance of a plan and purpose to commit offenses in violation of said Section 1951, to wit, the several offenses hereinbefore in this Indictment charged in Counts One to Eight, both inclusive, the allegations of which said Counts are here incorporated in this the Ninth Count of this Indictment by this reference thereto, with the same force and effect as though said allegations were here set forth in full, and divers other like offenses against said Section; all in violation of Section 1951 of Title 18, United States Code.

A True Bill.

DORIC C. PORTER,
Foreman.

JOHN B. STODDART, JR.,
United States Attorney.

Indorsed. Filed December 17, 1953. G. W. Schwaner, Clerk.

12 Judge's Notes Re: United States District Court

Docket 5236

TRANSCRIPT OF DOCKET ENTRIES

12/28/53. Defts. present in open Court with counsel. Pleas of not guilty, by each dft. with leave to withdraw same and to file motions attaching indictment in 30 days.

1/27/54. Entry of Appearance for Jack Green & Gen. Laborer's Local #397 by A. M. FitzGerald Filed. Withdrawal of Plea of Not Guilty of Defts Green & Gen. Lab. Local Filed. Mo. to Strike by Defts. Green & Gen. Lab. Local Filed. Mo. to Dismiss Ind. on all Counts thereof by Defts. Jack Green & Gen. Laborers' Local Filed.

2/23/54. Supplemental Motion Filed by Defts. Jack Green & Gen. Laborer's Local.

3/18/54. (J. Ajlair)—Leave to deft. to file additional supplemental motion. Same filed. Cause heard. Taken under advisement.

3/19/54. Mo. to Strike Additional Supplemental Mo. Filed by Plf. and Proof of Mailing.

4/16/54. Deft. motion to dismiss denied. Deft. motion to strike denied. Deft. supplemental motion denied. Deft. Additional Supplemental motion denied. Plt. motion to strike deft. additional supplemental motion withdrawn.

5/14/54. Defts. present in open court, in person and by attorney. Deft. Green being arraigned entered a plea of not gilty herein. Deft. "Laborer's Local" entered plea of not gilty by and through A. M. FitzGerald, its attorney. Case is set for jury trial on September 14, 1954, at 10 A. M. C. D. T.

9/14/54. Cause called for jury trial, all parties answer ready for trial. Petit jury called, selected and sworn to try issues, order of court that alternate jurors be called and accepted. 12 jurors and 1 alternate juror. Order of court by agreement of all counsel that all witnesses are excluded from the court room. Opening statements by plaintiff on the part of Asst. U. S. Attorney, Marks Alexander only. Order of court that special venire issue and that the U. S. Marshal pick up 5 petit jurors to report for service at 2:00 o'clock A. M. this date. Order of court that speci. venire issue and that the U. S. Marshal pick up 6 petit jurors to report immediately. By order of court oath is given to special court reporter, Samuel Goldberg as official court reporter of this court in this jury trial to report all evidence and exhibits in this jury trial. Order of court that court is adjourned until 10 o'clock A. M. (CDT) tomorrow.

9/15/54. Jury trial resumed. Opening statement by defendants' evidence by USA in part.

9/16/54. Jury trial resumed—evidence by USA in part.

9/17/54 Jury trial resumed—evidence by USA in part.

9/20/54 Jury trial resumed. Government rests. Defendants' motion to direct a verdict finding Jack Green not guilty filed.—Defts' mo. to direct a verdict finding General Laborer's Local No. 397 of Granite City, Ill. etc. not guilty filed. Cause heard on Defts' mo. at the close of Gov. evidence to direct a verdict finding Jack Green not guilty. Order of court that Mo. be denied. Cause heard on Defts' mo. at close of Gov. evidence to direct a verdict finding General Laborer's Local No. 397 of Granite City, Ill. etc. not guilty. Order of court that motion be denied. Evidence by Defts. in part.

13 9/21/54 Jury trial resumed. Evidence by Defendants in part.

9/22/54 Jury trial resumed—evidence by Defendants in part.

9/23/54 Jury trial resumed—evidence by Defendants—Defendants rest.

9/24/54 Jury trial resumed. Rebuttal evidence by USA. USA rests. Defts. rest. Defts. mo. to direct a verdict finding Jack Green not guilty filed. Defts. mo. to direct a verdict finding General Laborers' Local 397 etc. not guilty filed. Cause heard by court on motion of deft. Jack Green at close of all evidence to direct a verdict finding the deft. not guilty. Order of court mo. taken under advisement. Motion by U. S. Attorney by Marks Alexander to elect to proceed on counts 1, 2, 4 and 9. Order of court motion allowed. Order of court by agreement of counsel each side is allotted two hours each for closing arguments. Closing arguments by USA. Closing arguments by Defendants. Court instructs jury. Order of court oath is given to officer in charge of jury. Order of court that alternate juror Clay Margrave be discharged. Jury retires for verdict. Jury returns verdict into open court "We, the Jury find the deft. Jack Green guilty on counts 1 and 2 and not guilty on counts 4 and 9, filed and ent. jury returns verdict into open court. "We, the Jury find the Deft. General Laborers Local 397 of Granite City, Illinois, a Labor Union and Voluntary assn. of Workingmen Affiliated with International Hod Carriers Building and Common Laborers Union of America guilty on Counts 1 and 2 and not guilty on counts 4 and 9. Filed & ent. Motion by deft. counsel and order of court that defendants may file any motions in case within 10 days, ent.

10/4/54 Mo. of Deft. Jack Green in Arrest of Judgment filed. Mo. of Deft Green for Judgment of Acquittal and in Alternative for new trial filed. Mo. of deft. Gen. Lab. Local # 397 in Arrest of Judgment filed. Mo. of Deft. Gen. Lab. Local # 397 for Judgment of Acquittal and in alternative for new trial filed.

11/1/54 Cause heard on Mo. of deft. Jack Green in Arrest of for Judgment of Acquittal and in Alternative for new trial. Mo.

taken under advisement. Mo. of Gen. Laborers Local # 397 in Arrest of Judgment Mo. taken under advisement. Deft. Jack Green renews mo. made at close of Gov't evidence and at close of all evidence to direct a verdict finding Deft. not guilty. Mo. taken under advisement. Deft. Gen. Lab. Local # 397 renews mo. made at close of Gov't. evidence and at close of all evidence to direct a verdict finding Defts not guilty. Mo. taken under advisement.

1/24/55. Memorandum opinion of Judge Adair re: Motion in Arrest of Judgment; Order on Motions in Arrest of Judgment; Judgment herein on Verdict of Jury finding said defts guilty on cts one and two of said indictment, be and is hereby arrested. (Order made (See order)

2/15/55. Leave to US Attorney to dw. Reporters Transcript of proceedings herein. Same to be returned in 90 days (Adair, J.)

2/21/55. Notice of Appeal by U. S. filed (Proof of Service of Copy)

2/28/55. Mo. for ext. of time to file Defendant-appellee's Praecipe for Sup. Record—Proof of Notice—Prayer allowed. Time ext. to 3/22/55 (See Order)

3/15/55. Defts.-Appellee's Cross-Desigatnon & Praecipe for Ad'l Record—Proof of Service Thereto Attached.

3/17/55. Amendment to Cross-Designation & Praecipe for Ad'l. Record on Appeal—Proof of service thereto attached.

4/19/55. Appellant's Mo. for Ext. of Time to Docket Appeal, Affidavit & Proof of Service. Order ext. time to Apr. 29, 1955 to docket appeal filed & ent. (Adair, J.) Supplemental Designation & Proof of Service Filed.

II. Docket Entries—Criminal Docket No. 17, U. S. District Court

Docket # 5236

12/17/53. Return of Crim. Ind. Ent. Crim. Ind. Filed (June Term 1953)

12/28/53. Plea of not guilty by each Deft. with leave to wdw same & file motions.

1/27/54. Entry of Appearance for Jack Green & General Laborer's Local # 397 by A. M. FitzGerald filed. Withdrawal of Plea of Not Guilty of Defts. Green & Gen. Laborer's Local # 397 filed. Mo. to Strike for Green & Gen. Laborer's Local # 397 filed. Mo. to Dismiss Indictment and all Counts Thereof by Defts' Jack Green & Gen. Laborer's Local # 397 filed.

2/23/54. Supplemental Motion filed by Defts. Jack Green & Laborer's Local # 397.

3/18/54. Additional Supplemental Mo. by Defts. to Dismiss Ind. filed.

3/19/54. Mo. to Strike Additional Supplemental Motion filed by Plaintiff & Proof of Mailing.

3/18/54. Cause hd. on Defts. Mo. to Dismiss. Leave to said Defts. to file an Ad'l. Sup Mo.—& taken under adv. ent. (Adair, J.)

4/16/54. Mo. to dismiss; hrd. denied—Mo. to Strike denied. Sup. Mo. to Dismiss Denied. Ad'l. Sup. Mo. to Dismiss denied. Plts. Mo. to Strike Defts.' Sup. Mo. (Adl.) withdrawn ent. (Adair, J.)

5/14/54. Plea of not guilty by Deft. Green ent. (Adair) Plea of not guilty by Deft. "Laborer's Local" ent. Case set for jury trial 9/14/54 at 10 A. M. CDT (Adair, J.)

9/14/54. Trial by jury in part—alternate juror ordered ent. (Adair, J.)

9/15/54. Trial resumed ent.

9/16/54. Trial resumed ent.

9/17/54. Trial resumed ent.

9/20/54. Trial resumed evidence on behalf of Pltf. concluded. Mo. by ea. Deft. for directed verdict. Mo. denied ent. Mo. by Jack Green for Directed Verdict filed. Mo. by General Laborers' Local for Directed Verdict filed.

9/21/54. Trial resumed ent.

9/22/54. Trial resumed ent.

9/23/54. Trial resumed ent.

9/24/54. Trial resumed—at close of all evidence Defts. move for directed verdict—Motions heard and taken under adv.—Motion by U. S. Atty. to proceed on counts 1, 2, 4 & 9—Mo. allowed—trial concluded ent. Mo. by Deft. Green for directed verdict filed. Mo. by General Laborers Local for directed verdict filed. Verdicts of jury filed & ent. (Jury finds each Deft. guilty on counts 1 and 2 and not guilty on counts 4 & 9) On Mo. of Defts. ordered that Defts. may file any mo. within 10 das. ent.

10/4/54. Mo. of Deft. Jack Green in Arrest of Judgment filed. Mo. of Deft. Jack Green for Judgment of Acquittal in Alternative for New Trial filed. Mo. of Deft. Gen. Laborers' Local 397 in Arrest of Judgment filed. Mo. of Deft. Gen. Laborers' Local No. 397 for Judgment of Acquittal & in Alternative for New Trial filed.

10/13/54. 45 subpenas on behalf of Pltf. filed.

11/1/54. Cause hd on mo. of Defts. in arrest of Judg. & for Judg. of Acquittal or in the alternative for a new trial & taken under adv. ent. Defts. renew motions made at close of Govt's. evidence for directed verdict—motions heard & taken under adv. ent. 15-49 (Adair, J.)

1/24/55. Memorandum opinion re: Motion in Arrest of Judgment filed. Order that Judgment on Verdict of Jury finding Defts. guilty on counts 1 and 2 be arrested filed & ent. (Adair, J.) Complete transcript of Testimony in 3 volumes filed.

2/21/55. Notice of appeal to Supreme Court of U. S. filed (Proof of Service Attached)

2/23/55. Duplicate copy of Notice of Appeal together with statement of Docket Entries to Clerk Supreme Ct.

2/28/55. Mo. for ext. of time to file Deft's.-Appellees' Praecipe for Sup. Record filed—Notice of filing Mo. filed; Order ext. time to file Defts'-Appellees' Praecipe for Sup. Record to & inc. 3/22/55 ent. (Adair, J.)

3/15/55. Defts.-Appellees Cross-Designation & Praecipe for Ad'l. Record—Proof of Service Thereto Attached.

3/17/55. Amendment to Cross-Designation & Praecipe for Ad'l. Record on Appeal—Proof of Service Thereto Attached.

4/19/55. Appellant' Motion for Extension of time to docket appeal and file the Record thereof with the Clerk of the Supreme Court Filed—Affidavit and Proof of Service Thereto Attached.

4/19/55. Order Extending Time to April 29, 1955 within which to docket appeal record with Clerk of Supreme Court filed & ent. (Adair, J.)

4/19/55. Supplemental Designation & Praecipe for Additional Record on Appeal Filed—Proof of Service thereto attached.

50 In the District Court of the United States,
for the Southern District of Illinois,
Southern Division

Criminal No. 5236

THE UNITED STATES

vs.

JACK GREEN, ET AL.

VERDICT RE GREEN September 24, 1954

We, the Jury, find the defendant Jack Green guilty on counts one and two and not guilty on counts four and nine. Mack Witt, Foreman, Martha Burling, Florence Loos, Russell Greer, Hugh T. Kircher, Merlin Richter, William Keller, Homer Adams, L. C. Huseman, W. H. Bunte, Lewis Logsdon, Charles Troutner.

Indorsed: Filed Sept. 24, 1954, G. W. Schwaner, Clerk

51-62 In the District Court of the United States,
for the Southern District of Illinois,
Southern Division

Criminal No. 5236

THE UNITED STATES

vs.

GENERAL LABORER'S LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA;

VERDICT RE UNION—September 24, 1954

We, the Jury, find the defendant Gen. Laborers' Local No. 397 guilty on counts one and two, and not guilty on counts four and nine, Mack Witt, Foreman, Martha Burling, Florence Loos, Russell Greer, Hugh T. Kircher, Merlin Richter, William Keller, Homer Adams, L. C. Huseman, W. H. Bunte, Lewis Logsdon, Charles Troutner.

Indorsed: Filed Sept. 24, 1954. G. W. Schwaner, Clerk.

63 In the United States District Court Southern District of Illinois, Southern Division

[Title Omitted]

MOTION OF DEFENDANT JACK GREEN IN ARREST OF JUDGMENT—Filed October 4, 1954

Now comes the defendant, Jack Green, by his attorneys, Schaefer O'Neill and A. M. FitzGerald, and moves the Court to arrest the judgment in the above entitled cause for the following reasons:

(1) The indictment does not state facts sufficient to constitute an offense against the United States.

(a) The indictment fails to allege facts showing the nature of the commerce affected.

(b) The indictment fails to allege facts showing where and between what points any commerce was moving.

(c) The indictment fails to allege facts showing the origin of any commerce at any point within a state and its movement to or through any point outside such state.

(d) The indictment fails to allege facts showing in what manner or how any commerce was affected.

(e) The indictment fails to allege facts showing how any acts of this defendant affected any commerce.

61-68 (f) Counts 1 and 2 purport to charge extortion. However, each of said counts fails to allege sufficient facts to charge such extortion.

(g) Counts 1 and 2 fail to allege any facts comprising the wrongful use of actual or threatened force, violence or fear, and fail to allege in what respect defendant's conduct was wrongful, nor does either of said counts allege any act or acts constituting the use of actual or threatened force, violence and fear, nor how such act or acts affected any commerce.

(h) The indictment alleges mere conclusions as distinguished from facts and therefore fails to charge the ingredients of any crime.

(i) The indictment fails to allege any facts showing how any extortion affected any commerce, or any connection whatever between the two.

(j) The indictment fails to allege any criminal intents upon the part of this defendant.

(2) This court is without jurisdiction of the offense.

(a) The offense charged, if any, did not in any way involve interstate commerce.

(b) The facts alleged in the indictment fail to set forth an offense against the United States such as to give this court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this indictment, is to extend the jurisdiction of this court and the power of Congress beyond their constitutional limits.

SCHAEFER O'NEILL,
A. M. FITZGERALD,
Attorneys for defendant Jack Green

Indorsed. Filed Oct. 4, 1954. G. W. Schwaner, Clerk.

69

In the United States District Court for the Southern District of Illinois, Southern Division

Docket No. 5236.

UNITED STATES OF AMERICA

vs.

JACK GREEN AND GENERAL LABORERS, LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

MEMORANDUM OPINION. January 24, 1955

The Defendant Jack Green and the Labor Union Local No. 397 were found guilty by a jury of violating the Federal Anti-Racketeering Act. After the trial, motions for judgment of acquittal, new trial, and in arrest of judgment were duly filed and argued. The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.

2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

The main difficulty that I find with this proceeding is the charge of the Indictment, and in this connection I am concerned only
70 with Counts One and Two, under which the jury determined each of the Defendants were guilty. The pertinent provisions of the Indictment are as follows:

> "the Defendants did * * * obstruct, delay and affect and attempt to obstruct, delay and affect * * * interstate commerce * * * by extortion * * *, by attempting to obtain from Arthur W. Terry, Jr. * * * his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers * * *, the attempted obtaining of said money * * * being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., * * * by the wrongful

[illegible] of actual and threatened force, violence and fear.

The statute in question is Section 1951 of Title 18 U.S.C. commonly referred to as the Hobbs Act or the Anti-Racketeering Act. Before arriving at my decision I made a personal investigation as to the intent of Congress in the passage of this Act. This statute was originally passed in 1934, and there have been surprisingly few decisions construing this statute since its original passage.

The original Act specifically excepted the activity of the use of threats or force to obtain the payment of wages by a bona fide employer to a bona fide employee. In *United States v. Local 807* (1942) 315 U.S. 521, the Supreme Court analyzed this exception in considerable detail, and held that the statute did not apply where a person had used threats of force or other violent means to either achieve the status of an employee for a member of his Union or to secure wages for services. When the Hobbs Act was amended in 1946, no exception was made for cases where the property involved should be money demanded to be paid in the form of wages in the definition of extortion. Nevertheless, the Anti-Racketeering Act specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-LaGuardia Act and the Wagner Act.

When the motion to dismiss this indictment was argued, the main attack was directed to whether or not sufficient allegations were made to show that interstate commerce had been affected to
71 any degree. Very little if anything was said by the Defendants with respect to whether the charges of the indictment constituted a crime under the construction of Section 1951 of Title 18 U.S.C. At that time I sustained the indictment because in my opinion sufficient allegations as to interstate commerce were made.

It is now contended that the indictment does not state a cause of action within the meaning of the above section. In the usual extortion case, the extorter is obtaining money or property of another for his own benefit. This has generally been true in the racketeering cases which have been tried within the Southern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri. In these types of cases, the original demand is unlawful, and certainly the means to carry out the demand in those cases were unlawful and within the purview of the statute and the constitutional limits of Congress to enact statutes to protect interstate commerce. In the case at hand, I conclude that Green's original activity in "attempting to obtain from Arthur W. Terry, Jr. his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers" which said charge was seriously

controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative which was not prohibited by this statute.

The United States Supreme Court has recently held that a demand by a Union representative for "feather bedding" is not an unfair labor practice. *American Newspaper Publishers Assn. v. N.L.R.B.*, 345 U.S. 100 (1953); *Labor Board v. Gamble Enterprises*, 345 U.S. 117 (1953). It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a severe felony carrying a maximum of twenty years in the penitentiary under the Federal law, 72-73. When this Bill came before the House of Representatives, it was argued in detail by the members of the Judiciary Committee, and without a dissenting voice they maintained that this particular Bill meant just what it said. It was a Bill against robbery and extortion and had nothing whatever to do with labor laws, and their provisions. For this Court now to say this when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.

After reading the Indictment I concur with the decision of Judge George H. Moore, in the Eastern District of Missouri, United States of America v. Richard Kavner, et al., Defendants, in a similar Indictment, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor.

This memorandum opinion is to be filed with the Clerk of the Court, together with the written order of this Court which has been entered today arresting judgment.

(S.) J. LEROY ADAIR,
United States District Judge

ENTER: January 24, 1955

Indorsed: Filed Jan. 24, 1955, G. W. Schwarzer, Clerk

74 In the United States District Court
Southern District of Illinois
Northern Division

Criminal No. 5230

UNITED STATES OF AMERICA

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ORDER ON MOTIONS IN ARREST OF JUDGMENT—January 24, 1955

This cause now coming on for the decision of the Court with respect to the pending motions following full hearing and argument thereon heretofore held by the Court,

At the close of all of the evidence offered by the Government, the Defendants Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, each filed a motion for judgment of acquittal and at the close of all the evidence in the cause, each of the Defendants filed motion for judgment of acquittal, which motions the Court held under advisement; and now as to each of said four motions, after full hearing and due consideration by the Court, the same are denied.

Following the return of the verdict of the jury in this cause, the Defendants filed their separate motions for judgment of acquittal and in the alternative for a new trial; and now the Court, after full argument thereon, upon due consideration thereof, denies each of said motions.

Following the return of the verdict in this cause, the Defendants filed their separate motions in arrest of judgment, assigning 75 as reason therefor, among other things, the following:

1. * * * * *

2. This court is without jurisdiction of the offense

(a) The facts alleged in the Indictment failed to set forth an offense against the United States such as to give this Court jurisdiction.

(c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this Indictment is to extend the jurisdiction of this Court and the power of Congress beyond their Constitutional limits.

And now this Court, after full argument of the aforesaid motions in arrest of judgment, and upon due consideration thereof, doth hereby sustain the same solely on the grounds hereinabove set forth, and it is the order of the Court that the entry of the judgment herein on the verdict of the jury finding said Defendants guilty on Counts One and Two of said Indictment be and the same is hereby arrested.

ENTER: (S.) J. LEROY ADAIR,
Judge.

Dated: Jan. 24, 1955.

Indorsed: Filed Jan. 24, 1955, G. W. Schwaner, Clerk.

77. In the United States District Court for the Southern District of Illinois, Southern Division

Criminal Action No. 5236

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES —Filed February 21, 1955

I. Notice is hereby given that the United States of America, the plaintiff above named, hereby appeals to the Supreme Court of the United States from the order entered on January 24, 1955, arresting judgment of conviction for insufficiency of the indictment, which charged that defendants obstructed, delayed and affected interstate commerce by extortion by attempting to obtain from an employer his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers through the wrongful use of actual and threatened force, violence and fear in violation of 18 U.S.C. Section 1951.

This appeal is taken pursuant to 18 U.S.C. Section 3731.

II. The clerk will please prepare a transcript of the record in this case, for transmission to the Clerk of the Supreme Court of the United States; and include in said transcript the following:

1. Transcript of docket entries.

2. Indictment.
3. Verdict.
78-101 4. Motion in arrest of judgment.
5. Memorandum opinion rendered January 24, 1955.
6. Order granting motion in arrest of judgment and denying motion for judgment of acquittal and motion for a new trial.
7. Notice of Appeal.

III. The following question is presented by this appeal:

Whether the obstruction of commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for unwanted, superfluous and fictitious services of laborers, is a violation of 18 U.S.C. 1951.

(S.) SIMON E. SOBELOFF,
Solicitor General.

PROOF OF SERVICE (omitted in printing)

102 Clerk's Certificate to foregoing transcript omitted in printing.

103 Supreme Court of the United States

ORDER NOTING PROBABLE JURISDICTION—October 10, 1955

Appeal from the United States District Court for the Southern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

October 10, 1955.

U. S. GOVERNMENT PRINTING OFFICE 1955 203012 781

LIBRARY
SUPREME COURT, U.S.

No. 754

FILED
APR 23 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

STATEMENT AS TO JURISDICTION

SIMON E. SOBELOFF,
Solicitor General, Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statute involved	2
Question presented	3
Statement	4
The question is substantial	6
Conclusion	14
Appendix	15

CITATIONS

Cases:	
American Newspaper Publishers Ass'n. v. *N. L. R. B.*, 345 U. S. 100	6
N. L. R. B. v. *Gamble Enterprises, Inc.*, 345 U. S. 117	6
United States v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893	8, 13
United States v. *Local 807*, 315 U. S. 521	8, 9, 10, 13
Statutes:	
Copeland Act, 48 Stat. 979	9
18 U. S. C. 3731	7
Hobbs Act, 62 Stat. 793, 18 U. S. C. 1951	2, 6, 10
Public Law No. 486, 79th Cong., 2d Sess., 60 Stat. 420	10
Miscellaneous:	
89 Cong. Rec. 3201	11
89 Cong. Rec. 3202	12
89 Cong. Rec. 3220	12
91 Cong. Rec. 11841	11
91 Cong. Rec. 11842	10
91 Cong. Rec. 11900	11
91 Cong. Rec. 11907	11
91 Cong. Rec. 11911	11

941029—55——1

Miscellaneous—Continued

	Page
Hearings before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives on H. R. 6872 and H. R. 7067, 77th Cong., 2d Sess	16
H. R. 6872, 77th Cong., 2d Sess	10
H. R. 653, 78th Cong	11
H. R. 32, 79th Cong., 1st Sess	10
H. Rep. No. 238, 79th Cong., 1st Sess., p. 10	9

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. ———

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

STATEMENT AS TO JURISDICTION

OPINION BELOW

The opinion of the District Court arresting judgment of conviction has not been reported. A copy is annexed hereto as an Appendix.

JURISDICTION

On January 24, 1955, the District Court entered an order arresting the judgment of conviction on the two counts on which appellees had been found

guilty.[1] A notice of appeal to this Court was filed in the District Court on February 21, 1955. The jurisdiction of this Court to review on direct appeal the decision of the District Court arresting the judgment of conviction for insufficiency of the indictment, based on a construction of the statute upon which it is founded, is conferred by 18 U. S. C. 3731.

STATUTE INVOLVED

18 U. S. C. 1951, 62 Stat. 793, commonly referred to as the Hobbs Act, provides:

> § 1951. *Interference with commerce by threats or violence.*
>
> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal

---

[1] Appellees, in designating for transmission to this Court the entire record in the case, have indicated that they intend to argue that the order, although designated in arrest of judgment, is based on the evidence. This issue is discussed *infra*, p. 7, fn. 2.

property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

QUESTION PRESENTED

Whether the obstruction of interstate commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in

an attempt to compel an employer to pay wages for imposed, unwanted, superfluous and fictitious services of laborers, is a violation of 18 U. S. C. 1951.

STATEMENT

On December 17, 1953, an indictment in nine counts charging violations of 18 U. S. C. 1951 was returned against the defendants in the United States District Court for the Southern District of Illinois, Southern Division. Counts one and two, on which defendants were found guilty, charged that they had obstructed, delayed, and affected interstate commerce and attempted to do so by extortion. The extortion alleged was that defendants attempted, through the unlawful use of actual and threatened force, violence and fear, to obtain property from contractors engaged in interstate commerce. The contractors were alleged to be then engaged in executing a contract with the United States for the maintenance of a levee bordering the Chain of Rocks Canal, which was a channel and conduit for traffic on the Mississippi River and its tributaries. The property alleged to have been demanded was money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of their contracts.

The court submitted four of the nine counts to the jury, which returned a verdict of guilty as to both defendants on counts one and two and not guilty on the other counts. Defendants filed motions in arrest of judgment as well as motions for a judgment of acquittal and, in the alternative, for a new trial. The court denied defendants' motions for acquittal and, in the alternative, for a new trial, but granted their motions in arrest of judgment on the basis that 18 U. S. C. 1951, as construed by the court, does not apply to the facts alleged in the indictment. The memorandum opinion states:

> * * * the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:
>
> 1. That the Court is without jurisdiction of the offense because the facts alleged in the indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

After measuring the indictment and its allegations against the language of 18 U. S. C. 1951, the District Court concluded as a matter of

law that no crime was charged in the indictment within the intendment and reach of Section 1951. It reasoned that since appellee Green was acting "within his rights and responsibilities as a Union representative," and since all "featherbedding" is not an unfair labor practice (*American Newspaper Publishers Assn.* v. *N. L. R. B.*, 345 U. S. 100; *N. L. R. B.* v. *Gamble Enterprises, Inc.*, 345 U. S. 117), the use of force and violence in connection with feather-bedding demands was not within the purview of the statute. In this connection it stated:

> *After reading the Indictment*, I concur with the decision of Judge George H. Moore * * * in a similar *Indictment*, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor. [Emphasis added.]

THE QUESTION IS SUBSTANTIAL

1. The Hobbs Act, 18 U. S. C. 1951, *supra*, pp. 2–3, so far as here relevant, punishes anyone who delays, obstructs or affects commerce by extortion, which it defines as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *." The indictment charged appellees with obstructing, delaying and affecting

commerce by extortion in that they attempted to obtain money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers from Arthur W. Terry, Jr., and Ralph Wright, Jr., with their consent, induced by the wrongful use of actual and threatened force, violence and fear. Thus, the indictment follows the statute and alleges facts which fall squarely within its literal terms. The District Court has held, nevertheless, that the indictment does not state an offense under the statute because the use of force and violence was for a union objective which is not in itself necessarily unlawful.

This construction of the Hobbs Act, evidently influenced by constitutional doubts as well as by judgments as to what the purpose of Congress

---

* As we have noted (fn. 1, *supra*, p. 2), the appellees apparently propose to argue that the order below is based upon the evidence and not, as its designation shows, upon a holding that the indictment fails to state an offense under the statute as construed by the District Court. However, apart from the fact that the District Court expressly denied appellees' motions for judgment of acquittal and for new trial and granted the motion in arrest of judgment (App. *infra*, p. 15), the opinion below (see quotations *supra*, pp. 5–6) makes clear that the court's order was based upon "reading the Indictment" and "construction of the Anti-Racketeering Act * * *." Its decision was plainly stated as a refusal "to interpret the act in question as covering the type of activity *charged in the Indictment* * * *." (Emphasis added.) Thus, the opinion leaves no doubt, we believe, of the Government's right to prosecute this appeal under 18 U. S. C. 3731.

must have been (see Appendix, *infra*, pp. 16, 17–19), is directly contrary to the interpretation adopted by the Court of Appeals for the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893. In the latter decision, after reviewing the legislative history of the Hobbs Act, the majority said (198 F. 2d at 891–892):

> In these circumstances, the conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. * * * It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute.

Thus, the decision below exonerates appellees from liability for the very same kind of conduct as that which resulted in imprisonment for Kemble. In the interests of equal justice, the contrariety of views between the Third Circuit and the court below should be resolved by this Court.

2. We believe, moreover, that the court below has erred. The Hobbs Act was enacted for the specific purpose of overcoming the effect of this Court's decision in *United States* v. *Local 807*,

315 U. S. 521, in which conduct similar to that alleged here had been held not to constitute an offense under the predecessor Anti-Racketeering Act of 1934.[3] In the *Local 807* case, a union and some of its officers and members had been indicted and convicted for obstructing interstate commerce through extortion in that, by threats and violence, the defendants were stopping out-of-state truckdrivers and forcing them either to turn their trucks over to a union driver for delivery and unloading in New York or to pay the equivalent of a day's wages. The decision of this Court turned on the provision of the 1934 Act expressly excluding from its coverage "the payment of wages by a bona-fide employer to a bona-fide employee." The trial judge had refused to charge that it was not an offense under the 1934 Act to endeavor to obtain employment by threats or violence if the intention of the defendant was actually to work for the wages received.[4] See 315 U. S. at 538. This Court held the refusal erroneous, interpreting the statutory exception to apply if the objective of the defendants was to obtain the opportunity to work for the money but to accept the money even if the employers refused to permit them to work. The emphasis on the proviso of the 1934 Act indicates that, except for that proviso, the acts of violence would have been

---

[3] H. Rep. No. 238, 79th Cong., 1st Sess., p. 10.

[4] 48 Stat. 979, 73d Cong., 2d Sess. (1934), also known as the Copeland Act.

within the statute. Indeed, the opinion explicitly states, 315 U. S. at 536, that the holding there "does not mean that such activities are beyond the reach of federal legislative control."

Responding directly to this observation, the Hobbs Act eliminated the proviso. And the legislative history leaves little doubt that this modification was designed precisely to extend the reach of the antiracketeering prohibitions to conduct like that involved in the *Local 807* case and here. On March 21, 1942, twenty-five days after the *Local 807* decision, Mr. Hobbs introduced H. R. 6872 as an amendment to the Anti-Racketeering Act of 1934.[6] Although the statute here in question was a successor bill,[7] not finally enacted until July 3, 1946,[8] the purpose of altering the *Local 807* result remained constant and was clearly stated throughout. Thus, speaking on behalf of the bill which was approved, Congressman Michener said (91 Cong. Rec. 11842):

> A decision of the Supreme Court of the United States, rendered in 1942, makes this amendment to the law necessary if the rights and liberties of our people are to be assured.

---

[6] See Hearings before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives on H. R. 6872 and H. R. 7067, 77th Cong., 2d Sess.

[7] H. R. 32, 79th Cong., 1st Sess.

[8] Public Law No. 486, 79th Cong., 2d Sess., 60 Stat. 420.

Mr. Jennings stated (*id.* at 11911):

> * * * this bill is designed to protect trade and commerce against interference by violence, threat, coercion, or intimidation. It is brought before the Congress under and pursuant to the commerce clause of the Federal Constitution which gives Congress the power to regulate commerce among the States. The necessity for this measure grows out of the misconstruction placed upon the antiracketeering law enacted in 1934 by what is popularly known as the Byrnes opinion in the case of United States against Local 807.

Congressman Fellows declared (*id.* at 11907):

> * * * Its purpose is to protect trade and commerce against interference by violence, threats, coercion, or intimidation. It seeks to impress upon individuals who happen to hold a card of membership in some organization or other that there are obligations to recognize that other people may have certain rights. It has passed the House before by an overwhelming majority.

Other members spoke to the same effect. See *id.* at 11841 (Mr. Cox), 11900 (Mr. Hancock).

Similarly, when H. R. 653, a predecessor bill, was before the 78th Congress, Mr. Gwynne said (89 Cong. Rec. 3201):

> * * * Putting it briefly, what this bill does is to rewrite the law and leave out that exception on which the Supreme Court's

CONCLUSION

It is respectfully submitted that the decision below is erroneous, that the question presented is substantial, and that the Court should take jurisdiction of this appeal.

SIMON E. SOBELOFF,
Solicitor General.

APRIL 1955.

APPENDIX

In the United States District Court for the Southern District of Illinois, Southern District

(Docket No. 5236)

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

MEMORANDUM OPINION

The Defendant Jack Green and the Labor Union Local No. 397 were found guilty by a jury of violating the Federal Anti-Racketeering Act. After the trial, motions for judgment of acquittal, new trial, and in arrest of judgment were duly filed and argued. The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the

United States such as to give this Court jurisdiction.

2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

The main difficulty that I find with this proceeding is the charge of the Indictment, and in this connection I am concerned only with Counts One and Two, under which the jury determined each of the Defendants were guilty. The pertinent provisions of the Indictment are as follows:

> "the Defendants did * * * obstruct, delay and affect and attempt to obstruct, delay, and affect * * * interstate commerce * * * by extortion * * * by attempting to obtain from Arthur W. Terry, Jr., * * * his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers * * *, the attempted obtaining of said money * * * being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., * * * by the wrongful use * * * of actual and threatened force, violence and fear * * *."

The statute in question is Section 1951 of Title 18, U. S. C., commonly referred to as the Hobbs Act, or the Anti-Racketeering Act. Before arriving at my decision, I made a personal investigation as to the intent of Congress in the passage of this Act. This statute was originally passed

in 1934, and there have been surprisingly few decisions construing this statute since its original passage.

The original Act specifically excepted the activity of the use of threats or force to obtain the payment of wages by a bona fide employer to a bona fide employee. In *United States v. Local 807* (1942) 315 U. S. 521, the Supreme Court analyzed this exception in considerable detail, and held that the statute did not apply where a person had used threats of force or other violent means to either achieve the status of an employee for a member of his Union, or to secure wages for services. When the Hobbs Act was amended in 1946, no exception was made for cases where the property involved should be money demanded to be paid in the form of wages in the definition of extortion. Nevertheless, the Anti-Racketeering Act specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-LaGuardia Act and the Wagner Act.

When the motion to dismiss this indictment was argued, the main attack was directed to whether or not sufficient allegations were made to show that interstate commerce had been affected to any degree. Very little if anything was said by the Defendants with respect to whether the charges of the indictment constituted a crime under the construction of Section 1951 of Title 18, U. S. C. At that time I sustained the indictment because in my opinion sufficient allegations as to interstate commerce were made.

It is now contended that the Indictment does not state a cause of action within the meaning of

the above section. In the usual extortion case, the extorter is obtaining money or property of another for his own benefit. This has generally been true in the racketeering cases which have been tried within the Southern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri. In those types of cases, the original demand is unlawful, and certainly the means to carry out the demand in those cases were unlawful and within the purview of the statute and the constitutional limits of Congress to enact statutes to protect interstate commerce. In the case at hand, I conclude that Green's original activity in "attempting to obtain from Arthur W. Terry, Jr., his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers" which said charge was seriously controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative, which was not prohibited by this statute.

The United States Supreme Court has recently held that a demand by a Union representative for "featherbedding" is not an unfair labor practice. *American Newspaper Publishers Assn.* v. *N. L. R. B.*, 345 U. S. 100 (1953); *N. L. R. B.* v. *Gamble Enterprises*, 345 U. S. 117. (1953). It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a

severe felony carrying a maximum of twenty years in the penitentiary under the Federal law.

When this Bill came before the House of Representatives it was argued in detail by the members of the Judiciary Committee, and without a dissenting voice they maintained that this particular Bill meant just what it said. It was a Bill against robbery and extortion and had nothing whatever to do with labor laws, and their provisions. For this Court now to say that when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.

After reading the Indictment, I concur with the decision of Judge George H. Moore, in the Eastern District of Missouri *United States of America v. Richard Kavner, et al., Defendants*, in a similar Indictment, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor.

This memorandum opinion is to be filed with the Clerk of the Court, together with the written order of this Court which has been entered today arresting judgment.

(S) J. Leroy Adair,
United States District Judge.

Enter January 24, 1945.

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

Criminal No. 5236

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ORDER ON MOTIONS IN ARREST OF JUDGMENT

Filed January 24, 1955, —— o'clock ——. W. Schwaner, Clerk.

This cause now coming on for the decision of the Court with respect to the pending motions following full hearing and argument thereon heretofore held by the Court;

At the close of all the evidence offered by the Government, the Defendants Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, each filed a motion for judgment of acquittal and at the close of all the evidence in the cause, each of the Defendants filed motion for judgment of acquittal, which motions the Court held under advisement; and now as to each of said four motions, after full hearing and due consideration by the Court, the same are denied.

Following the return of the verdict of the jury in this cause, the Defendants filed their separate

motions for judgment of acquittal and in the alternative for a new trial; and now the Court, after full argument thereon, upon due consideration thereof, denies each of said motions.

Following the return of the verdict in this cause, the defendants filed their separate motions in arrest of judgment, assigning as reasons therefor, among other things, the following:

> 1. * * *
>
> 2. This court is without jurisdiction of the offense.
>
> (b) The facts alleged in the Indictment failed to set forth an offense against the United States such as to give this Court jurisdiction.
>
> (c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this Indictment is to extend the jurisdiction of this Court and the power of Congress beyond their Constitutional limits.

And now this Court after full argument of the aforesaid motions in arrest of judgment, and upon due consideration thereof, doth hereby sustain the same solely on the grounds hereinabove set forth, and it is the order of the Court that the entry of the judgment herein on the verdict of the jury finding said Defendants guilty on Counts One and Two of said Indictment be and the same is hereby arrested.

Enter: (S) J. LEROY ADAIR,

Judge.

Dated January 24, 1955.

U. S. GOVERNMENT PRINTING OFFICE: 1955

> 1. That the Court is without jurisdiction of the offense because the *facts alleged in the Indictment* fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover *the type of activity charged in the Indictment*, and to interpret the act in question as covering *the type of activity charged in the Indictment* is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits. [Emphasis added.]

Thus, in words as clear as language permits, the court made plain its intention of granting a motion in arrest of judgment on the basis of its construction of the Anti-Racketeering Act. The explicit denial of the motion for judgment of acquittal highlighted the fact that the order entered was in arrest of judgment.

Each of the references to "facts" in the memorandum opinion which appellees cite as demonstrating that the district court considered evidence in granting their motion has as its source the indictment itself. Similarly, the "facts" discussed in the Government's jurisdictional statement are those set forth in the indictment. Count One[2] of the indictment charged:

---

[2] Count Two, the other count upon which appellees were found guilty, differs from Count One only as to the dates and the names of the victims alleged.

That on or about, to wit, April 13, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries,

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA,

hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Arthur W. Terry, Jr., then doing business under the name, style and description of Terry Engineering Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Arthur W. Terry, Jr., to wit, his money, in the form of

wages to be paid for, imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Arthur W. Terry, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Arthur W. Terry, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Arthur W. Terry, Jr., and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

It is from the district court's ruling that such factual allegations in the indictment do not state an offense that the Government is appealing.

The allusion of the district court in its opinion to "Green's original activity," to which appellees point as reliance on evidence, refers, as the opinion unmistakably indicates, to the extortion as alleged in the indictment. In calling this activity "a lawful act," the court did no more than express a conclusion of law. The references to "the trouble in this Community and on this particular job" and to the practice "which had been customary and agreed to by contractors and laborers in this Community"

JUN 13 1955
HAROLD B. WILLEY, Cle

No. 54

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES IN OPPOSITION TO APPELLEES' MOTION TO DISMISS FOR WANT OF JURISDICTION

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice,
Washington 25, D. C.

INDEX

	Page
Cases:	
Hale v. United States, 89 F. 2d 578	7
United States v. Cook, 17 Wall. 168	7
United States v. Stone, 308 U.S. 519	2
Statute and Rule:	
18 U.S.C. 1951(c)	2, 6, 7
Rule 29(b), F.R. Crim. P.	2
Miscellaneous:	
16 *U. of Pitt. L. Rev.* 101	2

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

BRIEF FOR THE UNITED STATES IN OPPOSITION TO APPELLEES' MOTION TO DISMISS FOR WANT OF JURISDICTION

---

1. Appellees' motion to dismiss this appeal as not within the jurisdiction of this Court under 18 U. S. C. 3731 rests upon the contention that the district court, while purporting to grant appellees'

motion in arrest of judgment, did in fact grant a motion *non obstante verdicto*.[1] They argue that the references by the trial judge in his memorandum opinion to the "facts" of this case establish that the order was grounded upon a consideration of the evidence and not upon a construction of the Anti-Racketeering statute. The insubstantial nature of this argument is laid bare by reading the entire memorandum opinion of the district court in the light of the "facts" set forth in the indictment.

It is true, as petitioners argue, that this Court, in determining its jurisdiction over appeals under 18 U. S. C. 3731, will look to the substantial nature and legal effect of the order appealed rather than to its nomenclature. In the instant case, however, the district court left no room to question the nature of the order it entered and the reasons that compelled it to do so when it stated (Statement as to Jurisdiction, pp. 15-16):

> * * * The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

---

[1] While judgments *non obstante verdicto* were possibly not known in criminal cases at the common law (16 *U. of Pitt. L. Rev.* 101, at 107), their use in federal criminal cases after verdict to question the sufficiency of the evidence to support the verdict was upheld in the evenly divided opinion in *United States v. Stone*, 308 U.S. 519, entered before the adoption of the Federal Rules of Criminal Procedure. Under Rule 29(b), F. R. Crim. P., the sufficiency of the evidence may be questioned after verdict by a motion for judgment of acquittal.

are general comments which could have been made even if there had been no trial, as a means of demonstrating the court's construction of the statute. By alleging the use of force and violence to obtain money from the victims, the Government negated the existence or relevance of any contract in this case. The words of the judge clearly refer to a general situation posed to test statutory construction, not to the specific evidence in this case.

Thus, not only in nomenclature, but in reality, the order of the district court was in arrest of judgment.

2. The only issue raised on this appeal, as set forth in the jurisdictional statement, is:

> Whether the obstruction of interstate commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for imposed, unwanted, superfluous and fictitious services of laborers, is a violation of 18 U. S. C. 1951.

Appellees contend that since 18 U. S. C. 1951 contains in subsection (c) certain limitations to its proscriptions,[3] it is not possible to obtain a proper construction of the statute on this appeal from an indictment which does not by its terms negate the

[3] The subsection provides: "This section shall not be construed to repeal, modify or affect section 17 of Title 15, section 52, 101-118, 151-166 of Title 29 or sections 151-188 of Title 45."

applicability of the exceptions. Appellees admit that the indictment need not negate these exceptions, which are in the nature of affirmative defenses,[4] and that a motion in arrest of judgment does not reach such defenses, but argue that it is necessary to consider the evidence to determine whether the affirmative defenses of subsection (c) are applicable to this case.

This argument, however, misconstrues the issue before this Court to be that of guilt or innocence whereas the question is solely the construction of the statute as applied to the facts alleged in the indictment. A decision by this Court on the motion in arrest of judgment does not necessarily decide the whole case. If the judgment of the district court granting the motion in arrest should be reversed and the verdict reinstated, appellees would still have a right of appeal to the court of appeals from the judgment of conviction. All issues remaining in the case, such as the sufficiency of the evidence to support the Government's case or the applicability of the claimed affirmative defenses, would be open for consideration at that time. What is involved here is merely the specific ground on which the court arrested judgment, not the whole case.

---

[4] *United States v. Cook*, 17 Wall. 168; *Hale v. United States*, 89 F. 2d 578 (C.A. 4).

CONCLUSION

It is respectfully submitted that for the foregoing reasons the motion to dismiss this appeal for want of jurisdiction should be denied:

SIMON E. SOBELOFF,
Solicitor General.

JUNE, 1955.

JAN 1 1 1956

No. 34

Supreme Court of the United States

OCTOBER TERM, 1955

Per Curiam

Jack Gordon, on Behalf of Himself and All Others Similarly Situated, Appellant, v. Lyndon Van Hoosier, Assessor of Montgomery County, Alabama, et al.

Appeal from the District Court of the United States for the Middle District of Alabama.

[January 16, 1956]

Per Curiam.

The motion to affirm is granted and the judgment is affirmed.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	4
Summary of argument	7
Argument	10
I. The Hobbs Act does not exempt labor unions and their members from responsibility for acts of extortion and robbery because the money sought from the victim is demanded as "wages" for unwanted, superfluous and fictitious "services" of union members	13
A. The plain statutory language affords no basis for exempting the proscribed conduct where the payments sought by the use or threat of force and violence are for the benefit of a union or its members	13
B. The legislative history of the Hobbs Act shows the purpose of Congress to reach cases like this one	19
C. The provision in the Hobbs Act saving intact the federally protected rights of labor affords no immunity for the crimes charged in this indictment	35
II. There is no constitutional restriction forbidding application of the Hobbs Act to the facts alleged in the indictment	40
Conclusion	43

371771—56——1

CITATIONS

Cases:

	Page
Allen-Bradley Local v. *Board*, 315 U. S. 740	36
American Federation of Labor v. *Swing*, 312 U. S. 321	42
American Newspaper Publishers Assn. v. *N. L. R. B.*, 345 U. S. 100	6, 15
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	41
Automobile Workers v. *O'Brien*, 339 U. S. 454	36
Automobile Workers v. *Wisconsin Board*, 336 U. S. 245	36
Bianchi v. *United States*, 219 F. 2d 182, certiorari denied, 349 U. S. 915	38, 39
Callanan v. *United States*, 223 F. 2d 171, certiorari denied, 350 U. S. 862	38, 39
Cleveland v. *United States*, 329 U. S. 14	41
Cole v. *Arkansas*, 338 U. S. 345	42
Duplex Co. v. *Deering*, 254 U. S. 443	36
Hulahan v. *United States*, 214 F. 2d 441	10, 39, 41
Milk Wagon Drivers Union of Chicago v. *Meadowmoor Dairies*, 312 U. S. 287	16, 42
National Labor Relations Board v. *Fansteel Corp.*, 306 U. S. 240	9, 36–37
National Labor Relations Board v. *Gamble Enterprises, Inc.*, 345 U. S. 117	6, 15
National Labor Relations Board v. *Kelco Corp.*, 178 F. 2d 578	36
National Labor Relations Board v. *Longview Furniture Co.*, 206 F. 2d 274	36
Nick v. *United States*, 122 F. 2d 660, certiorari denied, 314 U. S. 687	10, 39, 41
Southern Steamship Co. v. *N. L. R. B.*, 316 U. S. 31	9, 36
United Construction Workers v. *Laburnum Corp.*, 347 U. S. 656	36
United States v. *Alsup*, 219 F. 2d 72, certiorari denied, 348 U. S. 982	18
United States v. *Bradford*, 194 F. 2d 197, certiorari denied, 343 U. S. 979	12
United States v. *Carbone*, 327 U. S. 633	16

Cases—Continued

	Page
United States v. *Compagna*, 146 F. 2d 524, certiorari denied, 324 U. S. 867	39
United States v. *Hutcheson*, 312 U. S. 219	37
United States v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893	8, 12, 13, 33, 34, 39
United States v. *Local 807*, 315 U. S. 521	8, 10, 11, 17, 18, 19–22, 32, 38, 40–41
United States v. *Petrillo*, 332 U. S. 1	10, 12, 49
United States v. *Varlack*, 225 F. 2d 665	39
United States v. *Zisblatt*, 172 F. 2d 740	12

Statutes:

Anti-racketeering Act of 1934, Act of June 18, 1934, 48 Stat. 979:	
Sec 2	8, 11, 17, 20
Sec. 3	11
Hobbs Act, 18 U. S. C. 1951, 62 Stat. 793	2, 7, 8, 11, 13, 35

Miscellaneous:

88 Cong. Rec. 5334–5335	23
89 Cong. Rec.:	
3162	24, 25
3163	25
3193	24, 28
3195	28
3201	27
3202–3203	28
3204–3205	28
3205	28
3207	28
3210–3211	28
3212–3213	28
3215	28
3217	27
3217–3218	28
3220	28
3221	28
3225–3226	28
3230	28

Miscellaneous—Continued

	Page
91 Cong. Rec.:	
11841	29
11842	24, 29
11843	24, 29
11846	29
11905–11906	29
11907	29
11909	29, 30
11910	29
11911	29, 30
11912	29
11912–11913	29
11913	30
11914	29, 30
11914–11915	30
11917	29
11918	30
11919	31
11920	31
11920–11921	29
11921	29
11922	32
92 Cong. Rec. 7308	32
F. R. Crim. P., Rule 34	12
Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 77th Cong., 2d Sess., on H. R. 5218, H. R. 6752, H. R. 6872, H. R. 7067	23
H. R. 32, 79th Cong., 1st Sess	28
H. R. 653, 78th Cong., 1st Sess	24, 28
H. R. 6872, 77th Cong., 2d Sess	23
H. R. 7067 (77th Cong., 2d Sess.)	23
H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess.	24, 28
H. Rep. No. 238, 79th Cong., 1st Sess	28
H. Rep. No. 1283, 79th Cong., 1st Sess	29
H. Rep. No. 2176, 77th Cong., 2d Sess	24, 28
H. Res. No. 406, 79th Cong., 1st Sess	29
S. 2347, 77th Cong., 2d Sess	22

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court arresting judgment of conviction (R. 14–16) is not reported.

JURISDICTION

On January 24, 1955, the District Court entered an order arresting the judgment of conviction on counts one and two of the indictment under which appellees had been found guilty (R. 17–18). A notice of appeal to this Court was filed in the District Court on February 21, 1955 (R. 18–19).

and this Court noted probable jurisdiction of the appeal on October 10, 1955 (R. 19; 350 U. S. 813). The jurisdiction of this Court to review on direct appeal the decision of the District Court arresting the judgment of conviction for insufficiency of the indictment, based on a construction of the statute upon which it is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the obstruction of interstate commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for imposed, unwanted, superfluous and fictitious services of laborers, is a violation of the Hobbs Act, 18 U. S. C. 1951.

STATUTE INVOLVED

18 U. S. C. 1951, 62 Stat. 793, commonly referred to as the Hobbs Act, provides:

> § 1951. *Interference with commerce by threats or violence.*
>
> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000

or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115; 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On December 17, 1953, an indictment in nine counts charging violations of 18 U. S. C. 1951 was returned against the defendants in the United States District Court for the Southern District of Illinois, Southern Division (R. 1–6). Counts one and two, on which defendants were found guilty (R. 1–3), charged that they had obstructed, delayed, and affected interstate commerce and attempted to do so by extortion. The extortion alleged was that the defendants had attempted, through the unlawful use of actual and threatened force, violence and fear, to obtain property from contractors engaged in interstate commerce. The contractors were alleged to be then engaged in executing a contract with the United States for the maintenance of a levee bordering the Chain of Rocks Canal, which was a channel and conduit for traffic on the Mississippi River and its tributaries. The property alleged to have been demanded was money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of their contracts.

The court submitted four of the nine counts to the jury, which returned a verdict of guilty as to both defendants on counts one and two and not guilty on the other counts (R. 11). Defendants

filed motions in arrest of judgment as well as motions for a judgment of acquittal and, in the alternative, for a new trial (R. 10, 12–13). The court denied defendants' motions for acquittal and for a new trial, but granted their motions in arrest of judgment on the ground that 18 U. S. C. 1951, as construed by the court, does not apply to the facts alleged in the indictment (R. 14–16). The memorandum opinion states (R. 14):

> * * * the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:
>
> 1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

After measuring the indictment and its allegations against the language of 18 U. S. C. 1951, the District Court concluded as a matter of law that no crime was charged in the indictment within the intendment and reach of Section 1951. It reasoned that since appellee Green was acting

"within his rights and responsibilities as a Union representative," and since all "featherbedding" is not an unfair labor practice (*American Newspaper Publishers Assn.* v. *National Labor Relations Board*, 345 U. S. 100; *National Labor Relations Board* v. *Gamble Enterprises, Inc.*, 345 U. S. 117), the use of force and violence in connection with featherbedding demands was not within the purview of the statute. In this connection the court states (R. 16):

> * * * It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a severe felony carrying a maximum of twenty years in the penitentiary under the Federal law.

From the order of the District Court granting the motion in arrest of judgment, the Government took this appeal under 18 U. S. C. 3731.[1]

---

[1] The appellees filed a Motion to Dismiss for Want of Jurisdiction, arguing that the order was not really in arrest of judgment, but was in the nature of a judgment *non obstante veredicto*. The Government filed a brief in opposition to that motion, pointing out that the District Court had expressly denied the motions for judgment of acquittal and a new trial and had based its decision wholly on the insufficiency of the indictment to state an offense under 18 U. S. C. 1951. On October 10, 1955, this Court noted probable jurisdiction of the appeal with no request for briefs or argument on the issue of jurisdiction. 350 U. S. 813. [fn. cont'd]

SUMMARY OF ARGUMENT

I

A. The plain terms of the Hobbs Act, 18 U. S. C. 1951 (*supra*, pp. 2–3), cover the conduct charged in this indictment, wholly apart from the legislative history (Point I, B, *infra*) revealing the unmistakable purpose of Congress to do so. The Act applies to "[w]hoever * * * affects commerce * * * by robbery or extortion or attempts or conspires so to do," and defines "extortion" to include "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *." Apparently recognizing the literal applicability of this language to this case, the District Court nevertheless held that there is an exception for one who, while employing force and violence, tenders to his victim the stand-by services of an unwanted and unneeded worker. There is no

[1] (Continued) On October 20, 1955, the Government filed a designation of the portion of the records to be printed, including only those documents which were relevant to the review of the decision of the District Court considered as one in arrest of judgment. Appellees filed a cross-designation, seeking to have printed the complete transcript of testimony at the trial. On November 3, 1955, the Government moved to strike appellees' cross-designation, pointing out that the transcript would have no relevancy to the sole issue of the sufficiency of the indictment presented by this direct appeal from the motion in arrest of judgment. On December 12, 1955, the Court granted the motion to strike the cross-designation.

basis for such an exception in what Congress wrote.

B. The legislative history of the Hobbs Act shows that Congress specifically rejected the very exception the decision below interpolates. In the predecessor Anti-racketeering Act of 1934, there was an exception where the objective of the threatened or actual force was "the payment of wages by a bona-fide employer to a bona-fide employee * * *." Interpreting this exception, this Court held the 1934 Act inapplicable to labor union members who used threats and violence to obtain payments for unwanted and unneeded employees. *United States* v. *Local 807*, 315 U. S. 521. Responding directly to this decision, Congress left no doubt of its purpose to require a different result. It accomplished this purpose in the Hobbs Act, eliminating the exception on which the *Local 807* decision rested and demonstrating in the repeated pronouncements of responsible members that this amendatory Act was to apply according to its terms, with no exemption for force and violence when employed by a union or union members to exact payments for unsought and superfluous service. *United States* v. *Kemble*, 198 F. 2d 889 (C. A. 3), certiorari denied, 344 U. S. 893.

C. The provision in the Hobbs Act (18 U. S. C. 1951 (c)) expressly preserving the rights of labor under other federal statutes affords no ba-

sis for the decision below. None of these statutes protects or condones the use of force and violence to achieve benefits for labor unions or their members, whether or not such benefits might lawfully be sought by lawful means. See, *e. g.*, *National Labor Relations Board* v. *Fansteel Corp.*, 306 U. S. 240; *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31. Of course, the Hobbs Act does not sweep within the "wrongful" conduct it proscribes the employment for lawful ends of union tactics which are in themselves legitimate. But force and violence, which are plainly "wrongful" in the absence of some justification not suggested here, are not "protected" by any federal statute against the sanctions of the Hobbs Act because they are employed by a labor union or its members. Given the necessary showing of an impact on commerce, a demand for money at gunpoint would be "robbery" within the Hobbs Act, notwithstanding that the money was destined for a union treasury. Similarly, the conduct alleged in this indictment is none the less within the Act's definition of "extortion" because the exactions sought were to be paid to union members the victim neither wished nor needed to employ.

II

The District Court suggested (R. 14), without explanation, that there might be some constitutional obstacle to applying the Hobbs Act in an-

cordance with its plain language and history. Apart from the fact that this vague adumbration hardly provides a satisfactory basis for constitutional adjudication by this Court (*United States* v. *Petrillo*, 332 U. S. 1, 5, 12), the suggestion seems groundless. The power of Congress over interstate commerce clearly extends to the prohibition of force and violence obstructing such commerce (see *United States* v. *Local 807, supra*, at 536); and has been upheld as exercised in the Hobbs Act. *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687; *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8). Neither the First Amendment nor any other provision of the Constitution precludes the application of this prohibition to a labor union or its agents.

ARGUMENT

The two counts of the indictment in this case under which appellees were found guilty (R. 1–3) charge them with obstructing, delaying, and affecting interstate commerce by extortion in attempting to obtain money from certain contractors engaged in interstate commerce through the wrongful use of actual and threatened force, violence and fear. Going beyond these bare essentials of the crime as defined in the Act, the indictment also alleges that the money exacted from the contractors was for wages to be paid for imposed, unwanted, superfluous and fictitious

services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of government contracts.

While at least tacitly recognizing that the indictment alleges the elements of an offense defined by the Hobbs Act, 18 U. S. C. 1951 (a) (*supra*, pp. 2–3), the District Court has held in effect that the Act was not intended to apply where the motive or ultimate plan of the extortioner in employing the threats and force and violence to exact money was to secure for a union member either the opportunity to work for, or the equivalent of, earned wages. The memorandum opinion acknowledges (R. 15) that the Hobbs Act makes no express exception "for cases where the property involved [in an act of extortion] should be money demanded to be paid in the form of wages." The District Court also recognized that, following the decision in *United States* v. *Local 807*, 315 U. S. 521 (1942), Congress repealed the exception[2] which was there held to exempt from the purview of the Anti-

---

[2] Section 2 of the Act of June 18, 1934, 48 Stat. 979, excepted from its coverage:

"Any person who * * *

"(a) Obtains or attempts to obtain * * * the payment of wages by a bona-fide employer to a bona-fide employee * * *."

Section 3 of that Act similarly provided:

"(b) The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

racketeering Act of 1934 labor union members who used threats and violence to secure employment, or, in lieu thereof, payments for unwanted and unneeded employees. Nevertheless, despite this deletion of the exception which was the basis for the *Local 807* decision, the District Court concluded that the Hobbs Act continues to exempt conduct of the type there involved.

We submit that the plain language of the Hobbs Act refutes this conclusion and that, if this may be doubted, the legislative history demonstrates beyond question the specific purpose of Congress to reach conduct such as that alleged in the present indictment. We believe, contrary to the decision below and in accord with the decision of the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893, that the use or threat of force and violence to compel the payment of money for unwanted and superfluous employees constitutes a crime under the Hobbs Act.[3]

---

[3] In our treatment of the single issue relating to the construction of the statute upon which the indictment is based, we do not nor can we properly look beyond the allegations of the indictment, which, on the motion in arrest of judgment, were held not to state a cause of action under the statute. *United States* v. *Bradford*, 194 F. 2d 197 (C. A. 2), certiorari denied, 343 U. S. 979; *United States* v. *Ziablatt*, 172 F. 2d 740, 741–742 (C. A. 2); see also Rule 34, F. R. Crim. P. Issues as to the sufficiency of the evidence or the propriety of the trial may be raised in normal course on appeal after judgment, should the construction issue on which this appeal is based be resolved in favor of the Government. *United States* v. *Petrillo*, 332 U. S. 1, 5.

I

THE HOBBS ACT DOES NOT EXEMPT LABOR UNIONS AND THEIR MEMBERS FROM RESPONSIBILITY FOR ACTS OF EXTORTION AND ROBBERY BECAUSE THE MONEY SOUGHT FROM THE VICTIM IS DEMANDED AS "WAGES" FOR UNWANTED, SUPERFLUOUS AND FICTITIOUS "SERVICES" OF UNION MEMBERS

A. THE PLAIN STATUTORY LANGUAGE AFFORDS NO BASIS FOR EXEMPTING THE PROSCRIBED CONDUCT WHERE THE PAYMENTS SOUGHT BY THE USE OR THREAT OF FORCE AND VIOLENCE ARE FOR THE BENEFIT OF A UNION OR ITS MEMBERS

As a matter of language, there is no place in the Hobbs Act for the exception inferred by the District Court in this case. See *United States* v. *Kemble*, *supra*, 198 F. 2d at 891. Within the reach of the Act's penalties is (18 U. S. C. 1951 (a)):

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section * * *.

The term "extortion," central to the issue here involved, is defined in unequivocal terms as follows (18 U. S. C. 1951 (b)):

> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Nowhere does this language even faintly suggest an exception where the "property" taken or sought to be taken from another is the money equivalent of earned wages. The fact that the extortionist regards the payment as the equivalent of an earned wage is as irrelevant to proof of a crime under this Act as it would be in the prosecution of any other crime of violence, including robbery. Nor is the criminal character of an act within the extortion definition altered by the fact that in its commission the extortionist tenders to his victim the stand-by services of an unwanted and unneeded worker as a spurious *quid pro quo* for the money. From the standpoint of the victim the result is the same as if no such services had been offered. He is made to hand over money through fear of harm to his person or his property and receives nothing of value to him in return. The extortionist is unjustly enriched as the result of his criminal activity, whatever descriptive term is used to describe the money that he demands, or whatever his rationale in committing the act.

The District Court was of the view that, to constitute extortion under the Hobbs Act, there must be not only the use of force and violence to coerce the payment, but also an ultimate objective which would in itself be unlawful. In other words, the court thought that, if the payment was one which could have been sought by

lawful means, the effort to obtain it by threatened or actual force and violence was not reached by the Act. But this view cannot be squared either with the Hobbs Act or with similar prohibitions elsewhere in the criminal law. The fact that money may be obtained through salesmanship or through forms of moral or other "coercion" which the law permits is obviously no excuse for obtaining the same money at the point of a gun. Similarly, the fact that a demand by a union officer might be lawfully asserted furnishes no justification for the attempt to accomplish the same end through the use of force and violence or the threat thereof.[4]

---

[4] It is not as clear as the District Court seems to have believed that the objective alleged in this indictment was a legal one. The District Court cites *American Newspaper Publishers Assn.* v. *National Labor Relations Board*, 345 U. S. 100, and *National Labor Relations Board* v. *Gamble Enterprises*, 345 U. S. 117, for the proposition that "featherbedding" is not necessarily an unfair labor practice. Neither of these decisions, however, sanctioned even peaceful coercive methods on the part of labor representatives to obtain gratuities for nonexistent services. The *American Newspaper Publishers Association* case left no doubt, in fact, that the Labor Management Relations Act means what it says when it condemns exactions, despite the peaceful means by which they may be obtained, "for services which are not performed or not to be performed" (345 U. S. at 110). The *Gamble Enterprises* opinion likewise makes it quite clear that an exaction of pay for "standing-by," in contrast to "a bona fide offer of competent performance of relevant services," is an unfair labor practice (345 U. S. at 123–124). The allegation of this indictment that money was demanded for unwanted, superfluous and "fictitious" services on its face raises an issue as to whether the demand was not *per se* an illegal

The opinion below speaks (R. 15–16) of "Green's original activity" as being "within his rights and responsibilities as a Union representative," and refers to the "lawful act on the part of Green in demanding money in the form of wages from the contractor." However, as this Court observed in *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 294, "acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence." It is no more logical to consider Green's demand for money as separate from his use of threats and violence to induce a state of fear in his victim than it would be had he used a loaded pistol to achieve the same result. In neither case would the otherwise benign motive of fostering labor union objectives be an excuse under the Hobbs Act for the fact that methods constituting extortion or robbery in interstate commerce were used.

The District Court erroneously reasoned that, if Green's acts were perpetrated to achieve labor union objectives, his conduct could not be unlawful. However, motive in this sense is not an element of the offense under the Hobbs Act, which

---

one under the Taft-Hartley Act. Since, however, the opinion below construed the indictment as charging a demand for the type of employment permitted under the decisions cited above, that construction is binding for purposes of this appeal. *United States* v. *Carbone*, 327 U. S. 633, 641.

prohibits the use of threats and violence affecting interstate commerce to exact money regardless of the ultimate "objective" or motive of the robbery or extortion. Prior to the amendatory Hobbs Act, it was essential under the Anti-racketeering Act of 1934 to show not only that the defendant wilfully and through threats of violence induced a state of fear in his victim with the intent of extorting a money payment, but that his ultimate "objective" was not to promote himself to the status of an "employee," even an unwanted and unused employee. A genuine tender of services, even though refused, was sufficient to remove him from the purview of the Act as a "person who * * * obtains or attempts to obtain * * * the payment of wages from a bona-fide employer to a bona-fide employee" within the meaning of the exception contained in its Section 2 (a) (fn. 2, *supra*, p. 11; see *infra*, pp. 20–22). See *United States* v. *Local 807*, *supra*, 315 U. S. at 533–534. The removal of the 1934 Act's Section 2 (a) exception by the Hobbs Act renders proof of the ultimate "objective" of the defendant irrelevant. If threats and violence are used in connection with a plan or purpose to extort affecting interstate commerce, the crime is completed. The *scienter* factor is satisfied by proving "the intention to use force and violence on the victim and the intention that the victim shall pay because of

it." *United States* v. *Local 807*, *supra*, at 542 (dissenting opinion of Mr. Justice Stone).[5]

In short, the Hobbs Act squarely covers this case in its unambiguous reference to "whoever" obstructs interstate commerce "by robbery or extortion," or commits or threatens physical violence "to any person or property" in furtherance of a plan or purpose to rob or extort. This inclusive language contains no exception for cases where extortion is employed to benefit a labor union or its members.[6] And, as we show in the

---

[5] This opinion is highly pertinent in interpreting the Hobbs Act because its reasoning was adopted by the congressional committee which drafted the amending legislation (see *infra*, pp. 19–32).

[6] In *United States* v. *Alsup*, 219 F. 2d 72 (C. A. 5), certiorari denied, 348 U. S. 982, the appellees contended that, despite the application of the Kickback Act (18 U. S. C. 874) to "whoever" commits the offense, the statute should be read to exclude union officials from its purview. Rejecting this argument, the Court of Appeals said (p. 74):

"The statute, in unmistakable terms, applied to 'whoever' commits the offense proscribed. Like any other criminal statute we think it is directed against an offense, not against particular persons. True, the Carbone decision exempted persons who were engaged in legitimate union activities, but we think that exemption extended to such persons because of the nature of the activities in which they were engaged, not simply because they were officials of the union. The indictment in the Carbone case, according to the trial court's construction as interpreted by the Supreme Court, described the activities of the accused in such a manner as to show that they were simply collecting union dues or fees according to union rules, a lawful activity not proscribed by the statute.

"In the instant case, however, no such facts appear in the indictment * * *."

discussion which follows, the Congress acted specifically to preclude any such exception.

B. THE LEGISLATIVE HISTORY OF THE HOBBS ACT SHOWS THE PURPOSE OF CONGRESS TO REACH CASES LIKE THIS ONE

Erasing any doubt that the statutory terms, which literally apply to this case, were meant to operate as they were written, the legislative history of the Hobbs Act reveals the concentrated and specific concern of Congress with this very problem. Beginning immediately following this Court's decision in *United States* v. *Local 807*, 315 U. S. 521, the legislative efforts which culminated in the Hobbs Act were focused precisely on the objective of changing the result in that case, where the exception in the 1934 Act for "the payment of wages by a bona-fide employer to a bona-fide employee" was held to exempt activities like the ones here. This history demonstrates, we think, that the District Court has attempted to reinstate the exception Congress deleted and the rule in *Local 807* which the deletion was designed to change.

The facts of the *Local 807* case revealed a situation similar in many aspects to the one in this case. The respondents were a teamsters union local and various of its members. Some of these union members lay in wait for out-of-state trucks coming through the Holland Tunnel and other points of entry from New Jersey into New York City. When a truck would enter the city, the

union members would force their way onto the trucks, and by beating or threats of beating the drivers, procure payments to themselves from the drivers or their employers of a sum of money for each truck, $9.42 for a large truck and $8.41 for a small one, said to be the equivalent of the union wage scale for a day's work. In some cases the out-of-state driver was compelled to turn over his truck to one or more of the respondents who would drive it to its destination, unload it, pick up the merchandise for the return trip, and surrender it to the driver at the point where it had been taken over. In other cases the money was demanded and obtained, but the owners or drivers rejected the offers of the union members to do or help with the driving or unloading. In still other cases the jury could have found that the respondents either failed to offer to work or refused to work for the money when asked to do so.

The respondents were indicted for and convicted of conspiracy to violate Section 2 of the Anti-racketeering Act of June 18, 1934, 48 Stat. 979. The judgments of conviction were reversed

---

Section 2 then applied to:

"Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

"(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, *not in-*

by the Court of Appeals for the Second Circuit (418 F. 2d 684), and the Government sought review in this Court, asking that the judgments be reinstated. The Court affirmed, but declined to dismiss the indictment as prayed for by the respondents in a cross-petition. 315 U. S. at 524–525.

The focal issue in the *Local 807* case was not whether the indictment stated a cause of action under the statute or whether the proof established the allegations of the indictment, but whether the trial court had correctly instructed the jury as to the application of the exception for "the payment of wages by a bona-fide employer to a bona-fide employee" (fn. 7, *supra*). It was the theory of the trial judge in his charge to the jury that the application of this exception depended, not on whether it was the ultimate objective or motive of the *defendant* to offer his services in return for the forced payment of money, but rather on whether the *victim* paid the money in exchange for services (in which case an employer-employee status might be said to be pre-

cluding, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

"(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

"(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b) * * *." [Emphasis added.]

ated), or protection (in which case the tender of services would only be incidental). This Court took a contrary view, holding that the application of the exception depended upon the "objective" or motive of the defendants in committing the act, and that "the jury was bound to acquit the defendants if it found that their objective and purpose was to obtain by the use or threat of violence the chance to work for the money but to accept the money even if the employers refused to permit them to work," 315 U. S. at 538. There is every indication in this Court's opinion that, but for the proviso, the case would have been deemed to come squarely within the literal language of the Anti-racketeering Act.

Immediately following that decision, Congress moved with significant alacrity to amend the Anti-racketeering Act of 1934. This Court rendered its opinion on March 2, 1942. A week later, on March 9, 1942, Senator Holman introduced a bill designated S. 2347 (77th Cong., 2nd Sess.) for the express purpose of removing the exception on which the Court had based its conclusion that the facts of the *Local 807* case were not within the coverage of the Act. The bill would have accomplished this by amending Sections 2 (a) and 3 (b) to make unlawful all demands for the payment of money or other consideration by force or violence. S. 2347 was referred to a subcommittee of the Senate Committee on the Judiciary for hearings, but

was apparently not acted on further. 88 Cong. Rec. 5334–5335.

On March 27, 1942, Representative Hobbs introduced another bill, H. R. 6872 (77th Cong., 2nd Sess.), for the same purpose of eliminating the exception from the Anti-racketeering Act of 1934. This and other related bills were referred to a subcommittee for study. Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 77th Cong., 2nd Sess., on H. R. 5218, H. R. 6752, H. R. 6872, H. R. 7067, pp. 4–5. During the hearings, various witnesses testified to the fact that farmers and others selling produce in interstate commerce were being systematically stopped en route to various urban market centers throughout the country and through violence or threats of violence were being required to pay a day's "wages" for an unwanted and superfluous "employee." Mr. Hobbs inserted into the record of the hearing (*id.*, pp. 88–95) the opinion of this Court in the *Local 807* case. The overriding purpose of overcoming that decision by amendatory legislation was constantly adverted to by committee members throughout the hearings. See, *e. g.*, pp. 6, 159, 185–190, 195–197, 214, 363–366, 399, 422–429 of the Hearings, *supra*.

H. R. 6872 was superseded by another bill, H. R. 7067, 77th Cong., 2nd Sess. (*id.*, pp. 5–6), which was reported out on May 27, 1942. Both the majority and minority reports made it clear that H. R. 7067 was intended to eliminate the

exception created by Section 2 (a) of the 1934 Act. The majority report reproduced the *Local 807* opinions in their entirety. H. Rep. No. 2176, 77th Cong., 2d Sess., pp. 2–9.

On January 6, 1943, substantially the same bill was reintroduced in the 78th Congress as H. R. 653 (H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess.). This bill contained as Title III an additional provision (similar to the present 18 U. S. C. 1951 (c)) to insure that it would not be construed to repeal, modify or affect the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, or the National Labor Relations Act. The report of the House Committee on the Judiciary said (H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess., pp. 1–2):

> This title is an amendment of the existing antiracketeering law which was enacted in 1934. It was passed in an effort to eliminate racketeering in relation to interstate commerce, of concern to the Nation as a whole. That statute came under examination of the Supreme Court recently in *United States* v. *Local 807* and the opinion in that case is set out in full, both the majority opinion and the dissent.

Representative Colmer of the Rules Committee,[8] who had introduced H. R. 653, made the follow-

[8] Hearings on H. R. 653 were held by both the Judiciary and Rules Committees of the House of Representatives (89 Cong. Rec. 3193). The Rules Committee departed from its usual practice of hearing only members of Congress, and heard the testimony of various labor leaders who had asked to be heard. 89 Cong. Rec. 3162. See also 91 Cong. Rec. 11842–11843.

ing explanation of its purpose on the floor of the House (89 Cong. Rec. 3162):

> This legislation, reported almost unanimously by the Committee on the Judiciary, I understand, would seek to stop racketeering in interstate commerce. It will be recalled that legislation was enacted some years ago that sought to do that very thing, and that the Supreme Court in a recent decision involving a case that arose in New York, rendered a decision through Mr. Justice Byrnes which held that that legislation did not cover the type of racketeering this legislation seeks to curb.

Representative Michener of the House Rules and Judiciary Committees stated in similar vein (89 Cong. Rec. 3163):

> * * * The bill finds its inception and motivation in the fact that the Supreme Court rendered a decision a few months ago interpreting the antiracketeering act passed by this Congress in 1934. The soundness of that decision is, in the considered opinion of many, most questionable. It was the purpose of that act to prevent robbery, extortion, and racketeering. It was not aimed at organized labor in any way, and in an endeavor to make that sure there was included within the law a provision which attempted to guarantee that thing. By what I deem, and many, especially among labor leaders, today deem to be a most unfortunate decision by the Su-

preme Court, this bill has been introduced. It was introduced at the invitation of the Supreme Court * * *.

* * * Then over in New York there was extortion, robbery, and racketeering committed by men who it developed later were members of a labor union. That same Department of Justice prosecuted those men for racketeering under that law. Those racketeers were convicted in their own bailiwick, in the city of New York, as racketeers, by a jury of their peers. They then appealed to the circuit court of appeals upon the ground largely that the judge had committed error in his charge to the jury, and that as members of a labor union they were attempting to carry out the proper and legal purposes of the labor union, and that they were exempt from law regardless of what they did, so long as they had in their own mind the thought that they were furthering a legitimate activity of a labor union. The circuit court of appeals reversed the conviction. The case then came to the Supreme Court of the United States, and the Supreme Court of the United States sustained the circuit court of appeals and indicated to the Congress that if the Congress intended to include this kind of act on the part of members of labor unions it should make it clear and amend the law. That is the purpose of this law. * * *

Representative Gwynne of the Judiciary Committee said (89 Cong. Rec. 3204):

> * * * Putting it briefly, what this bill does is to rewrite the law and leave out that exception on which the Supreme Court's decision is based. So the net result would be that the same set of facts which existed in the case of the Government against Local 807 would result in a conviction and punishment. That is title I.

And the original author of H. R. 653, Representative Hobbs, made the following observation as to its purpose (89 Cong. Rec. 3217):

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.
>
> * * * * *
>
> This bill is drawn in response to the challenge of the following quotation from the majority opinion:
>
> "This does not mean that such activities are beyond the reach of Federal legislative control. Nor does it mean that they need go unpunished."

During the vigorous and lengthy floor debate on the bill numerous members of the two committees which had considered the bill likewise showed in

clear terms that the purpose of the amendments was to extend the coverage of the 1934 Act to meet the precise factual problem of the *Local 807* case.[*]

Although H. R. 653 passed the House (89 Cong. Rec. 3230), it was not acted on by the Senate (H. Rep. No. 238, 79th Cong., 1st sess., p. 1).

On January 3, 1945, in the first session of the 79th Congress, Representative Hobbs introduced H. R. 32, a bill which was the counterpart of H. R. 653. The House Judiciary Committee recommended passage on February 27, 1945, in a report (H. Rep. No. 238, 79th Cong., 1st sess.) closely similar to its previous reports (see H. Rep. No. 2176, 77th Cong., 2d sess.; H. Rep. No. 66, Pt. 1, 78th Cong., 1st sess.). In this report (H. Rep. No. 238, *supra*) the Committee stated (p. 10):

> It is not the intention of the committee that title III be interpreted as authorizing any unlawful acts, particularly those amounting to robbery or extortion. The need for the legislation was emphasized by the opinion of the Supreme Court in the case of *United States v. Local 807* (315 U. S. 521).

[*] See 89 Cong. Rec. 3193 (Rep. Halleck), 3195, 3215, 3217-3218, 3221 (Rep. Hobbs), 3202-3203 (Rep. Walter), 3204-3205 (Rep. Graham), 3205 (Rep. Kefauver), 3207 (Rep. O'Hara), 3210-3211 (Rep. Hancock), 3212-3213 (Rep. Springer), 3220 (Rep. Celler), 3225-3226 (Rep. Robsion).

The bill was brought to the House floor under a limited debate resolution (H. Res. No. 406, 79th Cong., 1st sess.; H. Rep. No. 1283, 79th Cong., 1st sess.). Speaker after speaker emphasized that the proposal was intended to eliminate the exception which was the basis of the *Local 807* decision.[10] Thus, Representative Michener of the Judiciary and Rules Committees told the House membership (91 Cong. Rec. 11842):

> A decision of the Supreme Court of the United States, rendered in 1942, makes this amendment to the law necessary if the rights and liberties of our people are to be assured.

Later in floor debate Representative Michener stated that if interstate commerce was being interfered with and farmers and truckers were being forced to "submit to the treatment outlined by Chief Justice Stone [in his dissenting opinion in the *Local 807* case], then it seems clear that it is the obligation of the Congress to furnish national protection in these interstate operations". 91 Cong. Rec. 11843.

Another member of the Judiciary Committee, Representative Summers of Texas, after quoting

---

[10] *E. g.*, 91 Cong. Rec. 11841 (Rep. Cox), 11842 (Rep. Walter), 11846 (Rep. LaFollette), 11905–11906 (Rep. Robsion), 11907 (Rep. Fellows), 11909 (Rep. Summers of Texas), 11910 (Rep. Springer), 11911 (Rep. Jennings), 11912 (Rep. Hobbs), 11912–11913 (Rep. Whittington), 11914 (Rep. Russell), 11917 (Rep. Rivers), 11920–11921 (Rep. Gwynne), 11921 (Rep. Lemke).

from the *Local 807* decision, stated (91 Cong. Rec. 11909):

> It was the purpose of the Judiciary Committee to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated.

Still another committee member, Representative Jennings, told the House (91 Cong. Rec. 11911):

> The necessity for this measure grows out of the misconstruction placed upon the antiracketeering law enacted in 1934 by what is popularly known as the Byrnes opinion in the case of United States against Local 897.

During the floor debate, an attempt was made by Representative Celler to insert in the bill an exception for cases where the payment sought to be exacted through violence or threats of violence was "wages paid by a bona fide employer to a bona fide employee" (91 Cong. Rec. 11913). Representative Hobbs, speaking in opposition to this amendment, argued that it was "substantially the same as [the exception in the 1934 Act] which caused the error into which the Supreme Court fell when the majority opinion was rendered in the Local 807 case." 91 Cong. Rec. 11914. Other members expressed similar objections (Representative Russell, 91 Cong. Rec. 11914; Representative Walter, *id.*, 11914–11915; Representative Baldwin, *id.*, 11918), and the amendment was re-

jected. *Id.*, 11919. Representative LaFollette then offered an amendment which would have continued the 1934 exception in substantially the same form but would have redefined "the payment of wages by a bona fide employer to a bona fide employee" so as to exclude any payments made in response to force or violence.[11] He explained that this was intended (91 Cong. Rec. 11919) "to prevent a recurrence of what happened in the Supreme Court opinion". Representative Gwynne, opposing the amendment, expressed the fear that (*id.*, 11920) "it would constitute an open invitation to the Supreme Court to decide that case the same, if it should come before them again * * *." Mr. LaFollette's mo-

[11] This would have been accomplished by adding to the existing law the following provision (91 Cong. Rec. 11919):

"Sec. 7. The following definitions shall be binding upon all courts in construing this act:

"(a) The term 'the payment of wages by a bona fide employer to a bona fide employee' shall not be construed so as to include the payment of money or the transfer of a thing of value by a person to another when the latter shall use or attempt to use or threaten to use force or violence against the body or to the physical property (as distinguished from intangible property) of the former or against the body of anyone having the possession, custody, or control of the physical property of the former, in attempting to obtain or obtaining such payment or transfer.

"(b) The term 'the rights of a bona fide labor organization in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States' shall not be construed so as to ignore, void, set aside, or nullify the definitions set out or the words used in or the plain meaning of subsection (a) hereof."

tion to recommit the bill for amendment was voted down, and H. R. 32 was enacted (91 Cong. Rec. 11922; 92 Cong. Rec. 7308).

From this survey, there can be no doubt that Congress was attempting, in framing the Hobbs Act, to reach just the sort of activity which is alleged in this indictment. It was keenly aware of the fact that the situation involved in the *Local 807* case was a substantial evil which was being repeated all over the country. The debates show that Congress felt that robbery and extortion had no place as a means of procuring wage payments for union members. While there was lengthy and frequently brisk floor debate on the most effective means of dealing with this problem without inhibiting legitimate labor union activity, there was a broad area of agreement as to the need for *some* legislation to overcome the *Local 807* decision.

Since Congress thus intended the new Act to cover an area of activity which this Court in its *Local 807* opinion said the old Act did not cover, several general conclusions are justified. In the first place, the Act no longer excuses force and violence when employed by a union or its members to create fear in a potential employer to force him to accept the services of supernumeraries or pay them a wage equivalent. Secondly, the ultimate "objective" of the extortionist is no longer a pertinent consideration. Whether or not the extortionist fancies himself as being moved by

high principle because he acts on behalf of his union is irrelevant if he employs threats and violence with an intent that the victim pay over money in response to such threats and violence. And, finally, the Act as now written does not draw any distinction between crimes of extortion and robbery committed in connection with a labor dispute and those committed in other contexts. The labor dispute background is as factually irrelevant to a Hobbs Act violation as it would be in any other crime of violence punishable under federal law.

These were the conclusions of the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893. The evidence in that case established a situation analogous to the instant case. There, the victim, a truck driver employed by a Pennsylvania corporation, drove a load of merchandise to Camden, New Jersey, where he attempted to make delivery. While unloading the merchandise, the driver was approached by the defendant Kemble, a union business agent, who, after ascertaining that the driver was not a union member, demanded that he hire a helper from a local union for $10.00, which was the equivalent of a day's wages. On his refusal, defendant Kemble employed actual and threatened violence against the driver to force him to conform to the demand.

In an opinion affirming a judgment of conviction against Kemble for committing acts of vio-

lence pursuant to a plan and purpose to obstruct delivery and affect commerce and the movement of articles and commodities in commerce by extortion in violation of the Hobbs Act, Judge Hastie, speaking for the court, said (198 F. 2d at 891–892):

> Certainly, as a matter of semantics, the quoted words of the statute, "obtaining of property from another", are broad enough to cover Kemble's objective. And an examination of the legislative history of the statute convinces us that Congress intended such comprehensive coverage.
>
> * * * * *
>
> * * * the conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. We say "in proper cases" advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute.

We submit that the Third Circuit opinion and the statutory terms and legislative history upon which that opinion is based afford a complete answer to the reasoning of the court below in this case. The District Court's conclusion that Green's activity "in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence" does not constitute a crime under the Hobbs Act, certainly cannot be established, as contended, by evidence "as to the intent of Congress in the passage of this Act" (R. 15, 16). On the contrary, the facts pleaded in the indictment reflect the precise evil which prompted Congress to enact the Hobbs Act.

C. THE PROVISION IN THE HOBBS ACT SAVING INTACT THE FEDERALLY PROTECTED RIGHTS OF LABOR AFFORDS NO IMMUNITY FOR THE CRIMES CHARGED IN THIS INDICTMENT

In support of its conclusion that threats and violence to procure wage payments are not covered by the Hobbs Act, the court below pointed out (R. 15) that this Act "specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-La Guardia Act, and the Wagner Act."* The implication,

---

* 18 U. S. C. 1951 (c), to which the court referred, also preserves without modification pertinent provisions of the Clayton Act and the Railway Labor Act, providing:

"This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 15, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45."

though not spelled out, appears to be that if the indictment in this case were sustained, the Hobbs Act would operate to render illegal, activities which are traditional and legitimate coercive tactics of labor unions to achieve legitimate labor union objectives.

The answer is that the "wrongful" use of threats and violence to exact money alleged in this indictment is clearly not within any of the protections saved by the Hobbs Act. As the decisions of this Court show, such activities are nowhere safeguarded or condoned by the Clayton, Norris-La Guardia, and National Labor Relations Acts. *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656; *Automobile Workers* v. *O'Brien* 339 U. S. 454, 459; *Automobile Workers* v. *Wisconsin Board*, 336 U. S. 245; *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31; *Allen-Bradley Local* v. *Board*, 315 U. S. 740; *National Labor Relations Board* v. *Fansteel Corp.*, 306 U. S. 240; *Duplex Co.* v. *Deering*, 254 U. S. 443. See also *National Labor Relation Board* v. *Longview Furniture Co.*, 206 F. 2d 274 (C. A. 4); *National Labor Relations Board* v. *Kelco Corp.*, 178 F. 2d 578 (C. A. 4). A classic illustration of this point is the *Southern Steamship Co.* case, in which this court refused to compel reinstatement of union seamen under the National Labor Relations Act where they had committed mutiny as a means of compelling union recognition. In the earlier *Fansteel Corp.* case, similarly involving the use of

violence (seizing and holding employers' buildings in a "sit-down" strike), the Court held such activity to be (306 U. S. at 256) "outside the protection" of the National Labor Relations Act. Addressing itself to the contention that that Act required the reemployment of men who had been discharged for such unlawful conduct, the Court said (306 U. S. at 257–258):

> * * * There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the Act is to promote peaceful settlement of disputes by providing legal remedies for the invasion of the employees' rights. * * * The affirmative action that is authorized is to make these remedies effective in the redress of the employees' rights, to assure them self-organization and freedom in representation, not to license them to commit tortious acts or to protect them from the appropriate consequences of unlawful conduct. * * *

It is clear, of course, that the Hobbs Act does not condemn as "wrongful" or "illegal" union tactics which are legitimate and lawful. It does not, in the words of this Court in *United States* v. *Hutcheson*, 312 U. S. 219, 234–235, "say that that which on the equity side of the court is allowable conduct may in a criminal proceeding

become the road to prison." But this gives no support to the opinion of the District Court in this case. Force and violence are in themselves obviously "wrongful" in the sense of being illegal under the law of the United States or any State or Territory. *Callanan* v. *United States*, 223 F. 2d 171, 174 (C. A. 8), certiorari denied, 350 U. S. 862; *Bianchi* v. *United States*, 219 F. 2d 182, 196 (C. A. 8), certiorari denied, 349 U. S. 915. In the Hobbs Act, such conduct, where it obstructs interstate commerce and its end is the exaction of money payments, is in itself an evil which Congress sought to prevent. If a union member should force a victim engaged in interstate commerce to hand over money at pistol point for the union's treasury, it could hardly be denied that this would constitute "robbery" under the Hobbs Act. Nor could it be contended that such conduct was exempted by any of the federal labor laws. The contention fails here for identical reasons.[13]

In cases like *Callanan*, 223 F. 2d 171, *supra*, and *Bianchi*, 219 F. 2d 182, *supra*, where the means employed are on the surface the usual collective bargaining weapons, including the use of fear of economic loss caused by the threat of a strike, there can be a "wrongful" use of fear to exact payments within the condemnation of the Hobbs

[13] See also the discussion addressed to this issue in the Brief for the United States, pp. 41–45, *United States* v. *Local 807*, Nos. 131 and 132, October Term, 1941.

Act only if the objective is illegal. Such are the cases, including *Callanan* and *Bianchi*, where labor union officers or agents have brought the power of their organizations to bear on a victim for the purpose of exacting tribute which they intend simply to apply to their own personal use. *E. g., United States* v. *Varlack*, 225 F. 2d 665 (C. A. 2); *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8); Cf. *United States* v. *Compagna*, 146 F. 2d 524 (C. A. 2), certiorari denied, 324 U. S. 867; *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687. There, the employment of fear by means in themselves lawful is rendered "wrongful" by its objectives. Force and violence and threats thereof, on the other hand, are plainly "wrongful" absent a showing of justification, and our point is simply that neither the Hobbs Act nor any other federal statute affords justification for such activities alleged in the instant indictment.

This is the conclusion reached by the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893, discussed *supra* at pp. 33–34. As the court there held, the history of the Hobbs Act leaves no doubt of the Congressional purpose to punish a union's use of force and violence to enforce payment for unwanted "stand-by" labor, whether or not such payments may lawfully be sought through the peaceful devices of collective bargaining. Neither the Hobbs

Act itself nor any of the federal legislation it leaves unaffected affords any ground for thwarting this plain objective.

II

THERE IS NO CONSTITUTIONAL RESTRICTION FORBIDDING APPLICATION OF THE HOBBS ACT TO THE FACTS ALLEGED IN THE INDICTMENT

The opinion below states (R. 14), without further elaboration, that to interpret the Hobbs Act "as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits." Whether the District Court meant by this that the Hobbs Act as applied to the instant indictment would transgress the commerce power of the Federal Government, or whether it meant that "the type of activity charged in the Indictment" is protected by some First or Fifth Amendment guaranty, is not quite clear. In any event, neither of these theories, and no other, supports the District Court's bare suggestion of a constitutional difficulty.[14]

In addition to their arguments relating to the construction of the Anti-racketeering Act of 1934, the petitioners in the *Local 807* case challenged

---

[14] The very vagueness of the District Court's opinion in this respect suggests the appropriateness of deferring questions of the constitutionality of the Hobbs Act, as applied, to "a stage where the decision of a precise constitutional issue is a necessity." *United States* v. *Petrillo*, 332 U. S. 1, 5, 12.

the power of the Federal Government to enact legislation seeking to prohibit acts of violence in interstate commerce. Although it decided the construction issue adversely to the Government's position, this Court made short shrift of the suggestion that Congress could not have reached the problem presented in that case had it chosen to do so. The Court expressly noted that its conclusion "does not mean that such activities are beyond the reach of federal legislative control." 315 U. S. at 536.

The Anti-racketeering Act of 1934 had previously been sustained as a valid exercise of the commerce power in *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687. Cf. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 491–492, fn. 14. And since its amendment by the Hobbs Act in 1946, the constitutional validity of this measure protecting commerce from extortion has been recognized in *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8). Cf. *Cleveland* v. *United States*, 329 U. S. 14, where this Court said (p. 19):

> * * * The power of Congress over the instrumentalities of interstate commerce is plenary; it may be used to defeat what are deemed to be immoral practices; and the fact that the means used may have "the quality of police regulations" is not consequential.

3. The judgment of the District Court was not an order in arrest of judgment but was in effect a judgment non obstante veredicto, based upon the Court's consideration of the evidence.

May, 1955.

A. M. FITZGERALD,
SCHAEFER O'NEILL,
Attorneys for Appellees.

If Congress could validly enact the Hobbs Act under its commerce power, it could certainly extend its penalties to anyone whose activities come within its definitions and policy, regardless of the fact that in a given instance the violators are a labor union and its agent. While labor unions may enjoy certain First Amendment rights to communicate to employers and the public the legitimate grievances of their members, they enjoy no special constitutional license to employ the "shakedown" or threats and violence as substitutes for peaceful methods of persuasion, particularly where such threats and violence are used for the purpose of exacting wage payments for refused, or in this case "fictitious," services of supernumeraries. Even in upholding a union's right to picket, this Court recognized that peaceful labor union activity "when blended with violence may have a significance which neutralizes the constitutional immunity which such acts would have in isolation." *American Federation of Labor* v. *Swing*, 312 U. S. 321, 323; and see *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287; *Cole* v. *Arkansas*, 338 U. S. 345, 353–354. It is far clearer that force and violence or threats to employ them can by no stretch of imagination find a place among the rights the Constitution protects.

There is, in short, no valid constitutional reason to create an exception in the application of the

STATEMENT IN SUPPORT OF MOTION TO DISMISS APPEAL

I.

The Supreme Court is without jurisdiction for the reason that the District Court's decision is based not only on its interpretation of the indictment under the Hobbs Act (18 U.S.C. 1951) but also on its findings and conclusions concerning the evidence.

The District Court's Order was based, as the Memorandum of Opinion clearly shows, not only upon insufficiency of the indictment under the statute but also upon a consideration of and conclusions from the evidence.

The District Court did more than Appellant states it did (Footnote 2, p. 7, and Footnote 8, p. 13 of Appellant's Statement as to the Jurisdiction). After measuring the indictment against the statute, it made specific findings on the evidence in its Memorandum of Opinion wherein, measuring the evidence against the Act, it concluded that the evidence did not prove a crime under the Act. Reading the Memorandum of Opinion there is no escape from this conclusion.

The Opinion of a District Court is part of the record on appeal (*United States vs. Taylor*, 147 U.S. 695); Supreme Court Rule 12, Par. 2.

The District Court's Memorandum of Opinion contains these significant findings, not of law but of facts in evidence, one of which indeed is referred to by Appellant in its statement (P. 6 of Statement as to Jurisdiction).

---

1. The Memorandum of Opinion of the District Court, together with the Order on Motions in arrest of Judgment, are set forth in full in the Appendix to Appellant's Statement as to Jurisdiction (PP. 15-21) and are not repeated here.

Hobbs Act for "the type of activity charged in the Indictment" (R. 14). Violence and threatened violence are, after all, among the most elemental and serious of criminal activities. Their employment to the injury of commerce is nowhere in the Constitution immunized against the powers of Congress.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

JANUARY 1956.

(a) "In the case at hand *I conclude that Green's original activity* in 'attempting to obtain from Arthur W. Terry, Jr., his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers; which said charge was seriously controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative, which is not prohibited by this statute." (P. 18 of Appendix to Appellant's Statement) (Emphasis added).

(b) "It seems incongruous that Congress intended *that a lawful act* on the part of Green in demanding money in the form of wages from the contractor . . ." (P. 18 of said Appendix) (Emphasis added).

(c) "For this Court now to say that when a labor organization or officer of said organization *advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this community*, was a violation of this particular Act appears to me to be unreasonable." (P. 19 of said Appendix) (Emphasis added).

(d) "I conclude that *the trouble* in this Community and on this particular job was caused by a disagreement between the contractor and labor, and *was in no wise an attempt to extort for the use of either the union* or the Defendant, Green, any money or property of the contractor." (P. 19 of Appendix) (Emphasis added):

It is clear from the four above excerpts that the trial Judge considered and was deeply impressed by the *evidence* he heard. His finding that the defendant, Green's, *original activity* (for which he was nevertheless indicted) was, within his rights and responsibilities as Business agent of the Union,—that it was a *lawful act*—the employment of laborers, commonly known as swampers had been *customary and agreed to by contractors and laborers in this community*—and that *the trouble in this particular job was caused by a disagreement between the contractor and*

labor—all are findings of fact by the trial Court which are decisive in this case and are binding in this appeal.

II.

In view of the District Court's Memorandum of Opinion, it is impossible to consider its judgment without a study and understanding of the whole record including the evidence.

It is not only the District Court and the defendants who discuss evidence as well as pleadings and statute. Appellant in its own Statement does likewise. On page 8 thereof, discussing the *Kemble* case (*United States vs. Kemble*, 197 F. 2d, 889) *appellant refers to the conduct of defendants here as being the very same kind as that of Kemble.* Again on page 10, appellant adverts to the *Local 807* case (U.S. vs. Local 807, 315 U.S. 521) in connection with defendants here in these words, ". . . conduct like that involved in the Local 807 *and here*" (Emphasis added). And at the end of its discussion on page 13, continuing its reference to the Kemble case, and referring again to the facts of evidence in the instant case, appellant adds, "In its contrary ruling on the substantially *similar facts* of this case, the decision below is incorrect." (Emphasis Added.) Finally, with reiteration of quotations from the Congressional Record of debate on the Bill, appellant places emphasis upon hypothetical facts, far fetched in regard to the instant case, and concludes even its footnote (P. 13 of Statement as to Jurisdiction) with a further repetition of the refrain; "obstruction by force and violence."

The Kemble case itself, indeed, was decided not upon the face of the record at all but solely upon a review of the evidence. There the defendants raised no question whatsoever of the validity or sufficiency of the indictment. As appellant points out in its Statement as to Jurisdiction (P.

LIBRARY
SUPREME COURT U. S.

No. 54

MAY 25 1955
HAROLD B. WILLEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1954

UNITED STATES OF AMERCIA,

Appellant,

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, a Labor Union and Voluntary Association of Workingmen affiliated with INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION BY APPELLEE TO DISMISS FOR WANT OF JURISDICTION

STATEMENT IN SUPPORT THEREOF

A. M. FITZGERALD,
908 Ridgely Bldg., Springfield, Illinois

SCHAEFER O'NEILL,
Alton, Illinois

Attorneys of Record for Appellees.

SCHNEP[illegible] & BARNES, P[illegible] RS, SPRINGFIELD, IL

inal Appeals Act does not authorize review . . ."
(Emphasis added).

Again in *United States vs. Hastings*, 296 U.S. 188, in which the United States appealed from an order of the District Court for the Northern District of Mississippi sustaining a demurrer to an indictment, this Court, through Mr. Chief Justice Hughes, again referring to the Memo of Opinion of the District Court, said:

> "Mr. Chief Justice Hughes: 1. *The jurisdiction of this Court.* If the first four grounds of the decision, as stated in the certificate of the District Judge, are to be taken as wholly independent of the questions of the construction and validity of the United States Warehouse Act, those grounds may not be challenged on this appeal. The statute conferring jurisdiction on appeal by the Government in criminal prosecutions confines that jurisdiction to cases where the decision of the District Court, on demurrer, motion to quash or in arrest of judgment, 'is based upon the invalidity or construction of the statute upon which the indictment is founded,' or where the District Court has sustained 'a special plea in bar, when the defendant has not been put in jeopardy,' . . .
>
> "It was in the light of the considerations governing the exercise of the judicial power that the Criminal Appeals act was enacted and appeals by the Government were subjected to the prescribed limitations. . . . We think that the provision which limits the Government's appeal to those cases where the decision or judgment of the District Court is '*based*' upon the invalidity or construction of the statute, should be taken to refer to cases where that determination, and not a wholly independent ground, is the foundation of the judgment . . ."

Because of the nature of the statute and indictment in this case, wholly aside from any question of the sufficiency of the indictment and even it it were to be conceded that

Page

United States vs. Hastings, 296 U.S. 188 10

United States vs. Kemble, 197 F. 2d 889 ..... 5, 6, 7, 14

United States vs. Local 807, etc., 315 U.S. 521 ..... 5, 15

United States vs. McClone, 197 Fed. Supp. 285 14

United States vs. Taylor, 147 U.S. 695 3

United States vs. Waters, 175 Fed. 2d. 340; Dis. on Mo. App't., 355 U.S. 869 8

United States vs. Wayne Pump Co., 317 U.S. 260 9

United States vs. Zisblatt, 172 Fed. 2d. 740 8

Statutes:

Copeland Act, 48 Stat. 979; 18 U.S.C. § 420(a) 420(c) and 420(d) 14, 15, 16

Criminal Appeals Act, 62 Stat. 844; 18 U.S.C. § 3731 ..... 9, 11, 12

Hobbs Act, 62 Stat. 793; 18 U.S.C. 1951 ..... 1, 15, 16, 19, 20

Lea or Petrillo Act, 60 Stat. 89; 47 U.S.C. § 506 ..... 19, 20

Taft-Hartley Act, 61 Stat. 140; 29 U.S.C. § 158 20

Miscellaneous:

Appellant's Statement as to Jurisdiction 3, 5

Appendix to Appellant's Statement (District Court's Memorandum of Opinion) 4, 19

91 Cong. Rec. 11900 17

91 Cong. Rec. 11903 17

91 Cong. Rec. 11905 18

91 Cong. Rec. 11906 18

	Page
91 Cong. Rec. 11908	17, 18
91 Cong. Rec. 11912	17
91 Cong. Rec. 11913	18
93 Cong. Rec. 6441	21
S. 2248, 78 Cong. Rec. 457; 73rd Cong. Rec. 2nd Sess.	15
Supreme Court Rule 12(2)	3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1954

No. _____

UNITED STATES OF AMERICA,

Appellant,

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, a Labor Union and Voluntary Association of Workingmen affiliated with INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA.

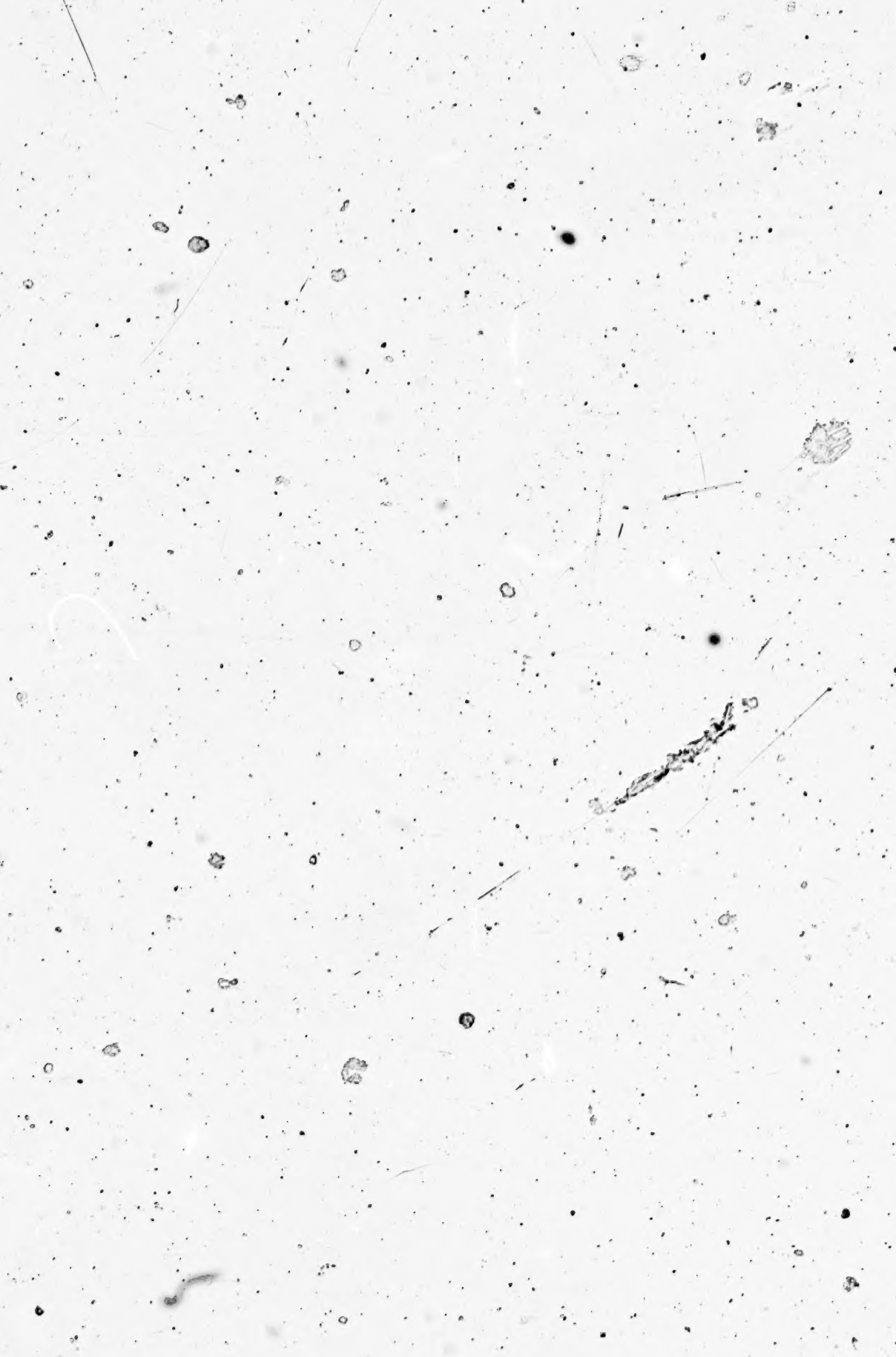
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION TO DISMISS

Now come appellees above named, by their attorneys, A. M. Fitzgerald and Schaefer O'Neill, and move the Court to dismiss the appeal herein for the following reasons:

1. The Supreme Court is without jurisdiction for the reason that the District Court's decision is based not only on its interpretation of the indictment under the Hobbs Act (18 U.S.C. 1951) but also on its findings and conclusions concerning the evidence.

2. In view of the District Court's Memorandum of Opinion, it is impossible to consider its judgment without a study and understanding of the whole record including the evidence.



8 thereof) in regard to the case the Circuit Court of Appeals said:

> "It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services *such as the evidence shows* Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute." (Emphasis added.)

Now, as opposed to such findings of the Appellate Court in the *Kemble* case is the specific finding of the District Court which tried the present case that—

> "I conclude that the trouble in this community and on this particular job was caused by a disagreement between contractor and labor, and was in no wise an attempt to extort . . ."

By these two quotations, both dealing with facts in evidence, the issue raised by this Motion to Dismiss on the ground that the District Court's order was based not only upon the insufficiency of the indictment under the Court's interpretation of the statute above, but also upon findings and conclusions from the evidence, is highlighted. This is further emphasized by the following statement of Appellant (P. 8 of Statement as to Jurisdiction):

> "Thus, the decision below, (referring to the decision in the instant case) exonerates appellees from liability for the *very same kind of conduct* as that which resulted in imprisonment for Kemble. In the interests of equal justice, the contrariety of views between the Third Circuit, and the Court below, should be resolved by this Court." (Emphasis added.)

If this Court could review the evidence in this appeal as the Circuit Court of Appeals did in that case, such a resolution might be made and appellees would themselves adopt appellant's view that it could.

But by what process of reasoning the appellant can argue

a "contrariety of views" between a judgment reviewed on the evidence in the *Kemble* case, and a judgment which it contends was based on the pleadings and the common law record only in this case, is difficult to understand unless, of course, appellant is willing to concede that the contentions of appellees as set forth in this Motion to Dismiss are correct, and that the judgment of the District Court in this case actually is a judgment on the evidence as well as upon pleadings. If so, of course, appeal does not lie to this Court.

In presenting this appeal, indeed, the government is in an anomalous position. It seeks to establish jurisdiction *for the appeal* by treating the Court's order in the strict sense as an arrest of judgment as at common law, but in its statement in support of direct appeal promptly departs from that limited sense to discuss (as though the order were what we believe it was in substance, namely, a judgment non obstante veredicto) evidence which is not before this Court, and, in these proceedings, can not be before it under the Appeals Statute (See discussion under Part III of this Statement).

It should be pointed out in passing moreover that, upon reviewing the evidence in the *Kemble* case, the Circuit Court of Appeals reversed the conviction of the defendant Union, and that there was a sharp division, supported by vigorous dissenting opinion, as to the propriety of allowing the conviction even of Kemble to stand.

But this much is perfectly clear, that the *conduct of the appellees*, as found by the District Court here, and the *conduct of Kemble*, as set forth in the case cited, were decidedly not "*the very same kind of conduct*"; and this Court should not be asked, on the pleadings in this case to affirm as to law on the facts of another.

III.

The judgment of the District Court was not an order in arrest of judgment but was in effect a judgment non obstante veredicto, based upon the Court's consideration of the evidence.

It has long been the practice of the Supreme Court to consider a matter of the record not according to mere designation but according to substance; not simply as it may be named but as it has effect; and particularly is this true under the Appeal statute.

Thus a motion to quash had been construed to be a plea in bar.

United States vs. Hark, 320 U.S. 531;
United States vs. Zisblatt, 172 Fed. 2d. 740 (742);
United States vs. Grainger, 346 U.S. 235.

In the *Hark* case above cited, Mr. Justice Roberts said:

> "The material question is not how the defendants pleading is styled but the effect of the ruling sought to be reviewed."

A plea in abatement has been treated as a plea in bar.

United States vs. Barber, (1910) 219 U.S. 72.

And an order granting a motion for judgment of acquittal, where only the indictment under the statute was construed, has been ruled to be in fact an order arresting judgment.

United States vs. Waters, 175 F. 2d. 340 (Transferred to Supreme Court where it was dismissed on Motion of Appellant—335 U.S. 863).

When, therefore, the District Court entered an order which, although denominated an order arresting judgment, was based, as the Memorandum of Opinion clearly shows, not on items of the common law record of itself, but also

upon the Court's view of and conclusions from the evidence, it became in substance and effect a judgment of not guilty notwithstanding the jury's verdict. Whatever the order's designation may be, as it was based upon the court's view of the evidence, and in effect overruled the verdict of the jury, it is not a mere arrest of judgment but is, in substance, a judgment *non obstante verdicto* . . . From such a judgment there is no direct appeal to this Court.

In fact, the Court has ruled in case after case that where the judgment of the District Court is based upon any ground independent of the grounds stated in the Appeals Statute (Tit. 18 § 3731, USC) the Court will not take jurisdiction, and this is true even though one of the reasons, such as that given by the District Court here, would be, if standing alone, a ground for direct appeal.

Thus, in *U. S. vs. Wayne Pump Co.*, 317 U.S. 200, this Court, through Mr. Justice Reed, referring to the District Court's Memorandum of Opinion, said:

> "There is disagreement between the parties as to whether the District Court sustained the demurrers on the ground of the deficiency of the pleadings as well as upon a construction of the statute. The *language of the opinion* makes it apparent to us that the district court's conclusion was at least in part bottomed upon the indefiniteness, uncertainty and lack of specificity of the indictments . . .
>
> "In the *light of the opinion*, however, we conclude that the judgment upholding the demurrer was based on grounds independent of the construction of the statute involved . . . The excerpts *from the opinion quoted are conclusive*; we think, that the district court rested its ruling on the insufficiency of the pleading as an independent ground.
>
> "Since the judgment below was not placed solely upon the invalidity or construction of the statute but had an additional and independent ground, the Crim-

the indictment is good under the statute, we would observe that an examination of the evidence is still absolutely necessary to a proper resolution of this case. Assuming for the sake of argument, therefore, that the appellant's contention with respect to the indictment is correct and that the question posed by appellant as far as the indictment goes is proper, the real question at issue nevertheless could not and cannot be determined either by passing upon the indictment or by answering the question.

For the statute here is in two main parts, one defining the offense and the other limiting its scope. Under such a statute, following the principle laid down in such cases as that of *United States vs. Cook*, 17 Wall. 168 (1872), the exception, proviso or limitation need not be negated in the indictment but remains nevertheless as a matter to be shown in defense. Yet, since nothing need be alleged in the indictment concerning it, neither an order sustaining a motion to dismiss or (which amounts to the same thing) an order in arrest of judgment goes necessarily to the defensive matter; and whether acts charged and proven or assumed to be proven are within the defensive provision of the statute can only be ascertained from examination of the evidence. Such an examination the District Court in this case made and, from it, determined that the defendants on the evidence are within the defenses; that they committed no crime; that there is not even any attempt to extort.

Since the matter of defense under the statutory provision was not covered by the indictment and, upon the assumption stated before, need not be in order to have a proper indictment under a statute drawn as this one is, to permit the issue now to be resolved only upon the indictment and the statute, excluding consideration of the evidence, would be, in effect, for this Court by judicial fiat under a strained construction of the Appeals Statute (18

U.S.C. 3721) to eliminate the provisions of paragraph (c) of the statute altogether, giving it a scope which Congress not only has not given it but has explicitly refused to give it. It would do violence also to two fundamental rules of statutory construction, namely, (1) that a criminal statute must be strictly construed against the pleader (*United States vs. Halseth*, 342 U.S. 277) and (2) that all parts of a criminal statute must be read together (*Alexander vs. The Mayor, etc. of Alexandria*, 9 U.S. 1).

As stated in the recent case of *Morissette vs. United States*, 342 U.S. 246 (1953):

> "The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute."

The appellant's question, under the circumstances, is hypothetical only and does not cover the defensive question involved. A demurrer to this indictment would not reach it.

The incriminating components of the statute here are "robbery" and "extortion" affecting interstate commerce. They are made to constitute a severe felony. Force, violence, threats of the same and fear resulting therefrom do not stand alone in this statute. Almost universally treated as mere misdemeanors when standing alone, they take on the seriousness of a felony only as components of the crimes of "robbery" and "extortion". The indictment here was drawn under the "extortion" element of the crime defined by the statute. As between the statutory definition of extortion and the common law description of robbery there is no essential difference in so far as the wrongful use of actual or threatened force, violence or

fear is concerned; in the one case, the taking must be from the person or in the presence of the alleged victim but essentially the very same kind of acts may cause the subject to consent to part with his property although not in the actual presence of the aggressor. When the latter is true, it is extortion. But in both, the taking as well as the means of taking must be wrongful.

Thus in the case of *United States vs. Durkee*, 25 Fed. cases 841, decided in 1860, the Court, defining robbery as it was at common law at the time of the separation from England, said:

> "In robbery, which is larceny accompanied by intimidation or force, the felonious intent in taking constitutes the offense."

Any effort by legitimate union means to obtain legitimate union work for legitimate union wages, therefore, is beyond the scope of this statute not only because of the limiting provisions of paragraph (c), but also because of the definite scope of the enacting clause itself. Yet again, in order to determine whether the District Court properly interpreted the evidence in arriving at its decision to that effect, that evidence must be examined by the reviewing court, which this court on direct appeal is without jurisdiction to do.

There is no Uncertainty Requiring Plenary Consideration

Finally, there is no urgency or uncertainty requiring plenary consideration by this court. That the statute does not embrace a fact situation such as this court has found existed here is clearly shown (a) by all the cases heretofore described under the Act, (b) by its legislative history, and (c) by statutes in *pari materia*.

(a). From the case of *United States vs. McClone*, 19 Fed. Supp. 285 (1937), to that of *United States vs. Kemble*, (1952) cited and stressed by appellant, no case has been found under this statute finally adjudging a defendant guilty except where "robbery" or "extortion" was the gist of the offense. None involved the obtaining of money or other thing of value for a lawful purpose but only for an unlawful one within the common law meaning of the term. In the *Kemble* case, which goes further than any other, money was sought and obtained for services neither performed nor to be performed; the victim was not even approached until the work being done had been virtually completed so that the doing of work for the money demanded was *ipso facto* impossible in that case.

See also *United States vs. Bioff*, 40 F. Supp. 497;
Nick vs. United States, 122 F. 2d. 660; cert. denied 314 U.S. 687;
United States vs. Campagna, 146 F. 2d. 524; cert. denied 324 U.S. 867;
Ladner vs. United States, 168 F. 2d. 771; cert. denied 335 U.S. 327.

The correctness of the District Court's decision that on the evidence, defendants here were not guilty under the Act can only be adjudged by examining the evidence; it cannot be determined upon the face of the common law record alone. And it cannot be determined by answering appellant's hypothetical question.

(b). Legislative history of the Act explicitly establishes the scope of it as intended by Congress. In its present form, the Act was developed from the Protection of Trade and Commerce Act, commonly known as the Copeland Act, of 1934. Although as first enacted, it did not specify either "robbery" or "extortion" in terms as such, it contained

language descriptive of the offenses proscribed, essentially the same as that used in the Hobbs Amendment of 1946 in defining these words. Originally introduced in 1933 following a Senate investigation of racketeering, in the draft first approved by the Senate (S. 2248, 78 Cong. Rec. 457, 73d Cong., 2nd Sess.), general prohibitions against violence and coercion, affecting commerce were included. In recognition of the fact, however, that in such form, it might do serious harm to labor in recognized legitimate activities, the bill was redrafted and the final draft received full support from organized labor as a whole. (*United States vs. Local 807 etc.*, 315 U.S. 521)

In this first Act, although the words "robbery" and "extortion" were not used, the following language was embodied (48 Stat. 979; 18 U.S.C. Secs. 420 (c) 420 (e)):

> "Any person who in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade and commerce . . .
>
> (a) Obtains or attempts to obtain, by use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or
>
> (b) Obtains the property of another with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

Obviously, therefore, from the very first enactment of the bill, force, violence and threats thereof were not offenses under this Act except when they were components

of the crimes defined in (a) or (b) above,—"robbery" and "extortion" essentially.

At the same time, as Section 6 of the original Act, the following was passed:

> "Provided, that no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

For more than ten years racketeers, including labor racketeers, were presented with success under the Act in such form and it was considered to be satisfactory until the Local 807 case. In 1946, as a result of the decision in that case the Hobbs Act was passed, amending and revising the statute, removing from it the provision in regard to "payment of wages by a bona fide employer to a bona fide employee," and in other respects rewriting it. For the first time, the words "robbery" and "extortion" were put into the Act; elements of the previously existing definitions, such as that respecting "the purchase of rental of property or protective services," in paragraph 420(a), not consistant with the common law definition of "robbery," were eliminated; and Section 6 (48 Stat. 979; 18 U.S.C. § 420(d) of the original act was replaced by paragraph (c) of the present Act. In other words, greater emphasis was placed upon "robbery" and "extortion" than the earlier version had contained. The object of these changes appears to be clear from the wording of the Act; it was for the purpose not of writing an anti-labor bill, but of strengthening an anti-racketeering Act. But plain as the statutory language now is, the fact that that was the intention of Congress is made even plainer by the reports of the House debates (the

matter was not debated in the Senate) Vol. 91 of Cong. Rec. 11899-11922, 79th Cong. 1st Sess.

Thus Representative Hobbs himself, at P. 11912:

> "Mr. Chairman, I want to make it perfectly clear that the sole and simple purpose, the single purpose of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers."

Representative Gwynne, one of its chief proponents, P. 11903:

> "Here is what a prosecutor would need to allege and prove to get a conviction under this law if this bill becomes law:
>
> "First, they would need to prove that the activity complained of in some way affected interstate commerce; second, they would have to prove that there was an actual, not a theoretical taking of personal property; third, they would have to prove that the taking was by violence, or by actual threats of personal violence; and then, fourth, they would have to prove that the acts done—*they might be violent; they might take something*, but the Government would have to prove in addition that the acts done did not come within the exceptions set out in Title III." (Emphasis added.)

Representative Walter at P. 11908:

> "Our distinguished colleague from Iowa pointed out the elements that it would be necessary to prove in order to make out a crime and I call the gentleman's attention to the fact that a mere threat does not constitute a crime. There must accompany that threat an unlawful taking."

Representative Hancock, at P. 11900:

> "This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does."

Representative Vursell, at P. 11908:

"Mr. Chairman, this act seeks to do only one thing—to strengthen the law against robbery and extortion. You can't read anything more into it. It should be passed by a unanimous vote."

Representative Robison, at P. 11905:

"I wish to reiterate that I cannot believe that a bill denouncing robbery and extortion can or will interfere in any way with the legitimate purposes and aims of labor."

Representative Summers, at P. 11908:

"'. . . as I can understand this bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, unless somebody thinks it is legitimate for them to rob and extort. If that is their notion, then this bill covers that activity."

Representative Whittington, at P. 11913:

"It punishes extortion and robbery no matter by whom committed. . . ."

Representative Robison, at P. 11906, summarizing:

"This bill merely makes clear robbery and extortion. . . . So it is up to the Government to prove, beyond a reasonable doubt, that the person charged under this anti-racketeering bill has committed either robbery or extortion before such person can be convicted."

Thus, whether or not Representative Gwynne and his colleagues were technically correct as to what the Government would have to prove; whether they distinguished between matters of allegation and proof under an indictment, on the one hand, and matters by way of defense under provisions of the statute, on the other, they were in complete accord on this, that the statute was aimed where it says it is aimed, at "robbery" and "extortion" affecting interstate commerce. Neither the specific inclusion of the words "robbery" and "extortion," their explicit definition nor

the provisions of paragraph (c) in reference to other Acts affecting labor were intended to be meaningless. The Act itself was not intended to proscribe lawful labor activities such as the District Court, in his Memorandum of Opinion, has found to have been embodied here, a fact which be determined by weighing the evidence against the Act, and which can be justly and properly determined in no other way.

(c) Finally, statutes in *pari materia* show that this was the intent of Congress. In the same year, 1946, that Congress enacted the Hobbs amendment, it also passed the Lea Act (47 U.S.C. § 506) also called the Petrillo Act. This Act reads, in so far as pertinent here, as follows:

> "(a) It shall be unlawful, by the use of express or implied threats of the use of force, violence, intimidation, or duress, or by the use of express or implied threat or the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—
>
> (1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or
>
> (2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or
>
> (4) to pay or give or agree to pay or give any money or other thing of value for services in connection with the conduct of the broadcasting business of such licensee, which are not to be performed."
>
> (d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon con-

viction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.00 or both . . ."

The Lea Act became law on April 16, 1946; the Hobbs Act, on July 3, 1946, less than three months later.

In passing these acts, was it the intention of Congress that for the very same offense for commission of which a musician might be fined no more than $1,000.00 or imprisoned for not more than one year or both, a common laborer should be fined up to $10,000.00, or imprisoned up to twenty years, or both? Or, in passing the Hobbs Act was Congress with respect to Interstate Commerce, aiming at robbery and extortion in the ordinary, well recognized meaning of the terms? Not at the activities of a labor organization or its business agent in seeking to carry out, and have local contractors carry out, the customary and, in this case, the contractual obligations of the Union and such contractors generally in the community?

Again in 1947, by enacting the Labor Management Relations Act commonly known as the Taft-Hartley Act, Congress amended section 8(b)(6) of the Labor Relations Act, (29 U.S.C. 158). This Section is embraced within the provisions of paragraph (c) of 18 U.S.C. Sec. 1951, the Hobbs or Anti-racketeering Act, which was reenacted, for the purposes of inclusion in the Code, on June 25, 1948.

As finally enacted the Act contained, respecting this matter, the following language only:

"Sec. 8.

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction,

for services which are not performed or not to be performed. . . .'"

In connection with this change, Senator Taft made the following statement on the Senate floor:

"'There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, the statute applies to only one industry. Those provisions are now the subject of court procedure. Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all feather-bedding practices. However, we did accept one provision which makes it an unlawful-labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill.'" 93 Cong. Rec. 6441. See also, his supplementary analysis inserted in the Record June 12, 1947. 93 Cong. Rec. 6859."

Obviously, therefore, in enacting these statutes in *pari materia* Congress had no thought or belief that the Hobbs Act covered labor activities such as those which the District Court found to exist in this case. The existence of the facts referred to by the District Court can only be determined from the evidence. In so finding, the District

Court was correct in the result reached, whether properly designated as an order in arrest or not. Since the facts can only be ascertained from a review of the evidence, treating the order as in substance a judgment *non obstante veredicto* as we believe it must be, this court is without jurisdiction on direct appeal.

CONCLUSION

The motion to dismiss in this case is filed on the assumption, based upon a long line of cases, that the Supreme Court will not re-try a case on direct appeal; that the District Court's order and Memorandum of Opinion are so involved with the evidence as well as the mere common law record that, in order to arrive at a correct decision under the circumstances existing, this Court would have to do likewise but that, under the Appeals Statute, it is without jurisdiction so to do.

Respectfully submitted,

A. M. Fitzgerald,
908 Ridgely Bldg., Springfield, Illinois

Schaefer O'Neill,
Alton, Illinois

Attorneys of Record for Appellees.

No. 54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1955

UNITED STATES OF AMERICA,

Appellant

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

ARTHUR M. FITZGERALD,
908 Ridgely Building,
Springfield, Illinois.

SCHAEFFER O'NEILL,
Alton, Illinois.

WILLIAM P. ROBERTS,
908 Ridgely Building,
Springfield, Illinois.

Attorneys for Appellees.

SCHNEPP & BARNES, PRINTERS, SPRINGFIELD, ILL.

INDEX

	PAGE
Jurisdiction	1
Question presented	1
Statutes involved	2
Statement	3
Summary of Argument	4
Argument	6
I. To Hold that where a Labor Organization or Officer of said Organization advocated and Demanded the Employment of Labor, which had been Customary and agreed to by Contractors and Laborers in the Community was a Violation of this Particular Statute is Unreasonable	6
A. The Lea Act and the Hobbs Act must be considered together	6
B. In Passing the Hobbs Act and in its Codification, Congress Left Explicit Instructions as to the Scope of Offenses Embraced by It	11
C. The Hobbs Act and the Taft-Hartley Act must be considered together as showing the Congressional Intention	12
D. Paragraph (c) of the Hobbs Act Codification Specifically includes Taft-Hartley	16
E. That the Act is Aimed against Robbery and Extortion is Further Shown by Comparison of the Three Successive Revisions	18
Conclusion to Part I of Argument	21
II. Answer to Government's Argument	22

	Page
Three Initial Observations	22
A. The Government's Cited Cases	25
B. The *Local 807* Case	26
C. The *Kemble* Case	30
Conclusion to Part II	34
Constitutionality	35
Conclusion of Brief	37

Citations

Cases:

Aldridge vs. Williams, 3 Howard 9	34
Alexander vs. The Mayor etc. of Alexandria, 5 Cranch 1	6
Bianchi vs. United States, 219 F. 2d. 182	25
Callanans vs. United States, 223 F. 2d 171	25
Carter vs. Bennett, 15 How. 354	22
Connolly vs. General Construction Company, 269 U.S. 385, 393	15, 36
Fasula vs. United States, 272 U.S. 620, 628	11
Hulihan vs. United States, 214 F. 2d 441	25
Kemble vs. United States, 198 F. 2d 889	25
Kordel vs. United States, 335 U.S. 345-349	23
Metropolitan R. R. Co. vs. Moore, 121 U.S. 558, 572	29
Mills Admr. vs. Scott, 99 U.S. 294	
Morissette vs. United States, 342 U.S. 246; Kickback Act 18 U.S.C. 874	21, 30
Nick vs. United States, 122 F. 2d 660	25

PAGE

People vs. Garry, 1933, 237 App. Div. 769, 263 N.Y.S. 288 29

People vs. Gassman, 1943, 182 Misc. 876, 885-886, 45 N.Y.S. 2nd 709, 715; Affd. 1946, 295 N.Y. 254 29

People vs. Koerber, 1926, 244 N.Y. 147, 153-154; 155 N.E. 79, 82 29

People vs. Vitusky, 1913, 155 N.Y. App. Div. 839, 154 29

United States vs. Campagna, 146 F. 2d 524 25

United States vs. Clase, 345 U.S. 255, 261; 34 L. ed. 717, 119 11

United States vs. Freeman, 3 How. 556, 562 6

United States vs. Grainger, 346 U.S. 235, 248; 97 L. Ed. 1575, 1585 20

United States vs. Local 807, 315 U.S. 521 ..... 25, 26, 27

United States vs. Petrillo, 332 U.S. 1; 91 L. ed. 1877 ..... 17, 23, 36

United States vs. Resnick, 299 U.S. 207, 210; 81 L. ed. 127, 129 11

United States vs. Stewart, 311 U.S. 60, (64) 6

United States vs. Sutter, 160 F. 2d. 754 29

United States vs. Verlack, 225 F. 2d. 665 25

United States vs. Wiltberger, 5 Wheat. 76, 95; 5 L. ed. 37, 42 11

United States vs. Zisblatt, 172 F. 2d. 940 22

Wong Yung Sung vs. McGrath, 339 U.S. 33, 52 20

Statutes:

The Copeland Act of 1934, 48 Stat. 979; 18 U.S.C. Secs. 420a and 420c-1940 Ed. 2, 11, 18, 38

PAGE

The Lea or Pearillo Act of 1946, 60 Stat. 89; 47 U.S.C. Sec. 506 ..... 2, 4, 9, 10, 13, 14, 16, 17, 39

The Hobbs Act of 1946, 60 Stat. 420 ..... 2, 10, 11, 12, 13, 16, 17, 18, 19, 21, 26, 40

The Taft-Hartley Act of 1947, 60 Stat. 440; 29 U.S.C. Sec. 158 ..... 2, 4, 12, 13, 16, 18, 42

The Anti-Racketeering Act of 1948 (62 Stat. 793; 18 U.S.C. 1951) 2, 4, 16, 17

Kickback Act, 18 U.S.C. Sec. 874 21

1 U.S.C. Sec. 204(a) 20

Miscellaneous:

91 Cong. Rec.:

11899-11922 30

11900-11906 29

11901 31

11906 30

11908 ..... 8, 30

11912 ..... 8, 20

11913 8

93 Cong. Rec.:

6441 ..... 13, 14

6859 14

22 Am. Juris. P. 237, Sec. 13 29

46 Am. Juris. P. 143, Sec. 10 29

Bishop New Crim. Pro. Sec. 1285 22

1 Chitty Crim. Law 661 22

Clark—Summary of American Law 1947, Sec. 25, P. 127 28

Kent's Commentaries, 13th Ed. P. 554 8

Sec. 850, Art. 80, N.Y. Cons. Stats. 29

Appendix 38-43

No. 54

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1955

UNITED STATES OF AMERICA,

Appellant

vs.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

Jurisdiction

If the order of the District Court was in fact in arrest of judgment rather than, in substance, as appellees have contended, a judgment *non obstante veredicto* because based in part upon consideration of the evidence, appellant's statement in regard to jurisdiction is sufficient.

Question

Appellees believe that the question formulated by the appellant does not correctly state the point at issue. As presented by the Government, the question sounds chiefly in interference with commerce by "force, violence and fear," whereas the statute sounds primarily in interfer-

ence by "robbery and extortion," with force, violence and fear only as elements thereof or contributing factors thereto. The indictment itself as drawn purports to sound in "extortion" whereas the question, if it has any reference whatsoever to extortion, touches it only by implication. The real question even on the government's theory of the appeal then is whether the indictment is sufficient to charge defendants with a crime under the act. The District Court held that it is not sufficient (R. 18).

Statutes Involved

The statute as set out in the appellant's brief, although sometimes called the Hobbs Act, is in reality the codified revision of that Act. The Hobbs Act itself was passed in 1946; that set forth in the Government's Brief in 1948. Both are revisions of an older Anti-Racketeering Act known as the Copeland Act.

This case, therefore, involves more than the one statute because, for its construction all of these must be considered together. In addition there are at least two other Acts *in pari materia*.

1. The Copeland Act of 1934, 48 Stat. 979; 18 U.S.C. Secs. 420a and 420e, 1940 Ed.

2. The Lea or Petrillo Act of 1946, 60 Stat. 89; 47 U.S.C. Sec. 506.

3. The Hobbs Act of 1946, 60 Stat. 420.

4. The Taft-Hartley Act of 1947, 61 Stat. 140; 29 U.S.C. Sec. 158.

5. The 1948 Codification of the Hobbs Act, 62 Stat. 793; 18 U.S.C. 1951.

Pertinent parts of these acts are set forth in the appendix, in tabular form, for ready comparison of the significant provisions.

STATEMENT

In addition to what the Government has stated, while it is true that the court submitted to the jury but four of the nine counts of the indictment, this was done on motion of the Government at the close of all the evidence and in the face of defendants' motion for a directed verdict. (Rec. 10.)

We also point out that of the four counts submitted, one and only one, namely, Count IX, charged defendants with conspiracy and that on this count, as on Count IV, they were acquitted by the jury. Thus, there is no question of conspiracy to be considered in this case.

And we further suggest that the District Court based its decision on more than the mere allegations of the indictment, but upon a consideration of facts in evidence, mentioned in the Memorandum of Opinion (Rec. 14-16) yet in no wise alleged in the indictment, for example: (1) that defendant-appellee, Green, was acting as a Union representative; (2) that his conduct in demanding the employment of labor was to obtain conformance with customary and agreed practices by labor and contractors in the community; (3) that the proof showed a mere disagreement between contractor and labor; and (4) that defendants' conduct was in no wise an attempt to extort for the benefit of either the Union or Green.

SUMMARY OF ARGUMENT

Appellees' argument is in two parts, as follows:

I. That the Anti-Racketeering Act must be read and interpreted in connection with other acts *in pari materia* or preemptive of the offense, if any, involved, and—

II. That appellant's argument is largely inapplicable to the facts and issue of this case and, beyond that, fails to meet the issue involved, namely, that of the true meaning and scope of the Act.

As to Part I, appellees suggest, *first*, that the Anti-Racketeering Act (18 U.S.C. 1951) must be read in connection with (a) the so-called Lea or Petrillo Act (47 U.S.C. 506) which deals expressly with feather-bedding practices of labor and was passed at the same session of Congress as the Hobbs Act, and (b) the Taft-Hartley Act (29 U.S.C. 158) expressly identified in paragraph (c) of the Anti-Racketeering Act as now in the Code; *second*, that said Acts conclusively show that the District Court in this case was correct in its conclusion that the defendants were charged with no crime within the Court's jurisdiction to try; and, *third*, that to have sustained the Government's position would have required the Court, (A) to legislate by reading into the Act a coverage not embraced by it, in violation of Section 1 of Article 1 of the Constitution vesting legislative powers in the Congress, and (B) to deprive defendants of their rights under the Fifth and Sixth amendments of the Constitution.

Part II of Appellees' Argument deals with Appellant's brief. Approximately fifty per cent of appellant's brief is devoted to matter, upon which there is no controversy, and upon which appellees insist as staunchly as does appellant. This point is that the Anti-Racketeering Act

applies just as clearly to a labor organization and labor union members as to any others. At no stage in these proceedings, from the day of the return of this indictment to now, have appellees or either of them contended or claimed that union membership as such, constitutes a cloak of immunity from prosecution for robbery or extortion in Interstate Commerce. Union or no union, under the Hobbs Act, appellees have been charged with no crime and have committed no act of racketeering, and the facts alleged in the indictment against them do not constitute racketeering under the Act. The indictment does not charge them with seeking anything whatsoever for themselves or either of them; does not allege that they sought or received anything of value; does not allege to whom the wages were to be paid, whether to these defendants, to the swamper, or to anyone; and, unless the word "extortion" itself as used in the indictment imputes it, does not charge them or either of them with any *wrongful intent* to constitute a crime under the Act—in short, that if it charges them with any offense, it is an attempted feather-bedding which is not covered by the Act either as written by Congress, or as intended by Congress.

ARGUMENT

I.

As the District Court said (R. 16) to hold that "Where a labor organization or officer of said organization advocated and demanded the employment of labor which had been customary and agreed to by contractors and laborers in the community, was a violation of this particular act appears to me to be unreasonable."

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in *pari materia* are to be taken together, as if they were one law. (Doug. 30; 2 Term Rep., 387 586; 4 *Maul vs. Selw*, 210.) If a thing is contained in a subsequent statute, it shall be taken to be within the meaning of that statute . . ."
>
> **United States vs. Freeman**, 3 How. 556, 562.

To the same effect, Chief Justice Marshal in *Alexander vs. The Mayor etc. of Alexandria*, 5 Cronch 1.

A.

The Lea Act and the Hobbs Act must be construed together because they are in pari materia.

United States vs. Stewart, 311 U.S. 60, 64.

These Acts were passed by the same Congress at the same session.

When these Acts (See Appendix P. 38) are read together, it is seen at once that the Government's indictment in this case is a patent attempt to charge against a common laborer's union and an individual, and subject them to a penalty of twenty years in prison, a $10,000 fine, or both, the commission of the very sort of thing pro-

scribed by the Lea Act for the broadcasting industry where the maximum penalty is only one year in prison, $1,000 fine, or both.

In passing both of these acts at the same session did Congress intend such preferential treatment to one union over another? Did it intend that the laborer should spend twenty years for that which the artist might pay only one? Did it intend arbitrarily to discriminate in favor of one group against another in the ratio of twenty to one on imprisonment and ten to one if fined for the very same kind of conduct?

Again, did it suppose for a moment that the offense defined in the Hobbs Act should include that of the Lea?

Both in law and reason all of these questions must be answered in the negative.

In this connection the words of Mr. Justice Field, in the case of *Mills, Administrator vs. Scott*, 99 U.S. 294, are singularly in point. The Court said:

> "There is in the statute no exception in terms of any class of cases; yet such a construction must be given to its provisions as not to impair the operation of other laws, which it is not reasonable to suppose the Legislature intended to repeal."

So here, it is not reasonable to suppose that Congress intended, by passing the Lea Act in 1946, to repeal the Copeland Act of 1934 if that Act, as the Government seems to contend, covered featherbedding; nor in passing the Hobbs Act a few weeks after the Lea Act to repeal the Lea Act, if the Hobbs Act proscribed the very same thing. Yet, in reason, such repeals by implication would be inescapable under the interpretation of the Anti-Racketeering Act here sought by the Government.

In *Kent's Commentaries*, 13th ed. P. 551, Chancellor Kent said:

> "Several acts in *pari materia* and relating to the same subject, are to be taken together and compared in the construction of them because they are considered as having one object in view and as acting upon one system. This rule was declared in the cases of *Rex vs. Loxdale*, and the *Earl of Ailesbury vs. Pattison;* and the rule applies, although some of the statutes may have expired; or are not referred to in the other acts. The object of the rule is to ascertain and carry into effect the intention; . . ."

The Government has set out at length statements of proponents of the Hobbs amendment on the floor of the Congress showing that the Act was intended to embrace and proscribe racketeering in interstate commerce. We do not repeat those citations here because they affirm that which we contend.

We add but three further comments, that of Representative Hobbs himself (91 Cong. Rec. 11912, 79th Cong. First Sess.) who said:

> "Mr. Chairman, I want to make it perfectly clear that the sole and simple purpose, the single purpose of this Bill, is to do the best we can do to protect interstate commerce and free the highways and streets of this country of *robbers*." (Emphasis added.)

And that of Representative Summers at P. 11908, of the same Record:

> ". . . As I can understand this Bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, *unless somebody thinks it is legitimate for them to rob and extort*. If that is their notion then this Bill covers that activity." (Emphasis added.)

And that of Representative Whittington from P. 11913:

> "It punishes extortion and robbery no matter by whom committed. . . ."

But none of these statements from the Congressional Record nor any other purport to affirm, suggest, declare or even so much as infer that anyone, either for or against the Bill, thought or intended or believed for a single moment that it covered the kind of activity described in and proscribed by the Lea Act. Indeed, the legislative history of the Lea Act shows that the subject matter covered by it was in the mind of Congress something entirely different from that embraced in the Hobbs Act—in short, that the one dealt with feather-bedding; the other, racketeering, by robbery or extortion.

The Lea Act, briefly summarized, makes it unlawful, by the use of express or implied threats of the use of force, violence, intimidation or duress to coerce, compel or constrain or attempt to coerce, compel or constrain the employer to employ or agree to employ any person or persons in excess of the number needed to perform actual services or to pay or give or agree to pay or give any money or other thing of value for services which are not to be performed.

The Court will notice the similarity between the wording of the Lea Act and the question as presented by the government (Appellant's Brief P. 2).

In substance the defendants here are accused of extortion by feather-bedding. As defined in the Hobbs Act, extortion means the obtaining of property (not jobs) from another, with his consent, induced by the wrongful use of actual or threatened force, violence or fear. Where, in the Hobbs Act, is there any language making it a crime to coerce, compel or constrain or attempt to coerce, compel or constrain anyone by any means to employ any person or persons in excess of the number needed (superfluous help) or to coerce, compel or constrain or attempt to coerce, compel or constrain the payment of money or other thing of

value for work not to be performed (fictitious services)? There is none. Yet the Government would write these provisions of the Lea Act into the Hobbs Act by construction or implication.

Moreover, in the Lea Act, the Congress set forth its description of "superfluous" services in one clause, (a)(1), and "fictitious" services in another, (a)(4), (See Appendix P. 39) making each separately an offense, as they must be, since they are the antithesis of each other, one describing more work than is needed, the other, no work at all.

The incongruity of the Government's position, we submit, is more fully brought out by a definition of the terms "superfluous" and "fictitious." Both have been defined by Webster and other Dictionaries, as follows:

> "Superfluous" means, in excess of what is sufficient, necessary, normal, or desirable; superabundance; surplus, not needed."
>
> "Fictitious" means in contrast—"feigned, imaginary, pretended, not real; fabulous, counterfeit, not genuine."

Thus these two words are repugnant. By construction it might be said that they embrace the situations described in the cited paragraphs of the Lea Act—that is, (a)(4) and (a)(4) above defining two different types of feather-bedding, but there is no language in the Anti-Racketeering Act to which they are applicable. Neither by common law nor by statute are the terms "superfluous" or "fictitious" embraced in the Hobbs Act.

In short, the Government seeks, by using the word "superfluous", to bring within the Hobbs Act the crime of feather-bedding as set forth in paragraph (a)(1) of the Lea Act, and, by the use of the word "fictitious" to include the feather-bedding described in (a)(4) of the Lea Act.

Thus to do, we submit, is to contravene well established and salutory principles namely:

(1) Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the words used.

United States vs. Resnick, 299 U.S. 207, 210;
Fasula vs. United States, 272 U.S. 620, 628;
United States vs. Wiltberger, 5 Wheat. 76, 95.

(2) There are no constructive offenses, no crime by imputation.

United States vs. Resnick, Supra;
Fasula vs. United States, Supra;
United States vs. Chase, 135 U.S. 255, 261.

B.

Further to make its intention clear, the Congress, in passing the Hobbs Act in 1946 and, again, in 1948, in revising and codifying the same, left explicit instructions as to the scope of the offenses embraced by the Act, namely, robbery and extortion.

By the 1946 Amendment (Hobbs) Congress removed from the original Anti-Racketeering Act of 1934, the controversial phrase "not including, however the payment of wages by a bona fide employer to a bona fide employee" but it also did much more than that; it substituted the word "fear" for "coercion"; it removed entirely the phrase "the purchase or rental of property or protective services"; it wrote into the Act, for the first time the words "robbery" and "extortion" as such; and it made other changes. It eventually shortened the Original Act from approximately 484 words down to 282 words. It made such changes as it deemed necessary to reconstruct the act as an *anti-racketeering* measure *aimed at robbery and extortion only.* (Emphasis added.)

Certainly in this case, where the word *extortion* is included in the indictment, unless it shall be treated as surplusage, it is an integral part of the charge.

Can it be treated as "surplusage"? In formulating its question apparently the Government wishes to treat it as surplus (See question presented in Brief of U.S., P. 2). The word extortion does not appear in the question at all.

But if "extortion" be treated as surplusage, is the wording of the statute not thus taken out of the hands of Congress? And if extortion can be treated as surplusage in an indictment, may not robbery also be? In other words, if one may go, must both not go? And if both go, what then is left? We submit that to ask these questions is to answer them. By what authority can any statute be so revised and rewritten except by Congress?

Such, we think, was the sense in which the District Court said that to construe the Act as the Government sought to have it construed was to extend the jurisdiction of the Court beyond its constitutional limits.

C.

Having thus revised the Anti-Racketeering Act in 1946, the Congress in 1947 passed the Taft-Hartley Amendment to the Labor Relations Act further showing its intention (61 Stat. 140; 29 U.S.C. Sec. 158—See P. 42 of Appendix).

By this amendment, Congress, save as previously dealt with in the Le... Act for the broadcasting industry, if it did not explicitly preempt the field of feather-bedding, clearly showed by its action at least that, within the purview of that body, the Hobbs Act in no wise embraced the field.

Section 8 (b)(6) of the Taft-Hartley Act (T. 29 U.S.C. Sec. 158(b)(6) (See P. 42 of Appendix) made it an unfair labor practice for "a labor organization or its agents to cause or attempt to cause an employer to pay or deliver or

agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed," language almost identical with that used in Paragraph (a)(4) of the Lea Act (T. 47, Sec. 506(a)(4)).

Section 10 of the Taft Hartley Act (See Appendix B, p. 42) in paragraph (a), empowered the National Labor Relations Board to prevent any person from engaging in an unfair labor practice listed in the above named Section 8 affecting commerce; in paragraph (e), gave the Board power to petition any Circuit Court of Appeals or, when they might be in vacation, any district court, for enforcement of its order; and expressly and pointedly and emphatically added "The jurisdiction of the court shall be exclusive. . . ."

In connection therewith, the words of Senator Taft himself are significant (93 Cong. Rec. 6441):

> "There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, the statute applies to only one industry. Those provisions are now the subject of court procedure. Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all feather-bedding practices. However, we did accept one provision which makes it an unlawful labor practice for a union to

accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill." 93 Cong. Rec. 6441.

See also, his supplementary analysis inserted in the Record June 12, 1947: 93 Cong. Rec. 6859.

---

1. In addition to what Senator Taft has said, the difficulties in formulating legislation in regard to the so-called practice of featherbedding are further illustrated by a consideration of the work of a swamper, whose employment, although affecting commerce, may be beneficial to it and not detrimental at all. A swamper is a common laborer who tends the heavy excavating or bull-dozing machines in levee and river work—cuts ahead of the machine for pit-falls and obstructions, guides its progress through difficult areas, attaches to it other equipment, cleans the track of the machine when it becomes clogged with dirt and debris, supplies it with oil, water, gas, etc. He earns but a common laborer's wage. The heavy equipment operator, together with his machine, on the other hand, draws perhaps twenty times as much. True he may be able to operate without the swamper. The operator himself can service his machine. He can stop it, get off it, let it stand, do his own scouting ahead, come back, get on, start up, proceed a pace, and then repeat the process. He may leave the machine idle while he fastens on to it, without help, the obstacles to be dragged away. By so doing he may double or triple the cost of the particular job being done by him. With the help of the swamper, by way of contrast, instead of enlarging the duration of the job, he may cut it down. With the swamper's help the machine's productivity may be and usually is increased tremendously so that the total cost with a swamper becomes far less than the cost without him. A heavy equipment owner may not like this. He may call it, as he has, "imposed, unwanted, superfluous and fictitious service." With a swamper, for example, he may do a job in ten hours, at $23.00 per hour—$21.50 for himself and machine; $1.50 for the swamper—total $230.00 whereas without the swamper, he might be able, as above indicated, to extend the work for twenty hours or even thirty hours, thereby doubling or tripling the cost. Under such circumstances employment of a swamper may be violently opposed by the owner, particularly if he is on a cost plus contract. Therefore, it cannot be assumed that the employment of the swamper is *ipso facto* a bad economic practice, and certainly a Union agent undertaking to secure his employment, is not automatically, a racketeer.

Thus Congress has expressed itself unmistakably in the matter of feather-bedding, and under the principle of *expressio unius est exclusio alterius*, only that feather-bedding which requires the payment of money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed (fictitious services—no work) is an unfair labor practice, while superfluous labor—more than needed—which the Government here seeks to make one of the most serious crimes in the Federal Code, is not even an unfair labor practice, other than as proscribed by the Lea Act in the broadcasting industry. In that connection, is there any language in the Anti-Racketeering Act informing the public that this is not so? Can any citizen by reading the Act gain information that it is not? Indeed reading the Act and particularly paragraph (c) thereof, would any citizen not be led to believe that the very opposite is true so that, to adopt the Government's interpretation of the Act, would produce not an Act of information, but rather one misleading to the public?

So to interpret the Act would make it unconstitutional. It would bring it clearly within the language of this Court as found in the case of *Connolly vs. General Construction Company*, 269 U.S. 385, 393:

> "The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be held to answer charges based upon penal statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue."

This, too, is the universal rule. Since Congress, by the

Taft-Hartley Act, has given *exclusive jurisdiction* to the Circuit Courts of Appeal or the District Courts, as the case may be (See Sec. 10(e) Taft-Hartley, P. 42 of Appendix) to enforce, on petition by the National Labor Relations Board, as to "fictitious" services, can it be that the doing of more work than may be necessary or wanted—"superfluous" services, is a vicious crime while the doing of no work at all is only subject to National Labor Relations Board enforcement?

Appellees submit that in passing the Hobbs Act Congress aimed at racketeering, that it arrived at a proscription of racketeering in the Act, and knew both what it had and had not done when it took up the question of feather-bedding in the Taft-Hartley amendment.

The Congressional intent to preempt the field within the scope and provisions of Section 8(b)(6) and 10(a) of the Taft-Hartley Act is manifest by the very language of these sections. There can be no doubt that in the instant case the employers could have availed themselves of the above provisions of the Taft-Hartley. That being the case, can it be said to be within the whimsey or discretion of the Government as to whether it will proceed in a case like this under Taft-Hartley or the Hobbs Act, or, if in the broadcasting industry, under the Lea, Taft-Hartley or Hobbs Acts? We think not.

D.

With Taft-Hartley thus on the Statute Books, Congress came next (in 1948) to a codification of the Hobbs Act and for this purpose rewrote and reenacted the measure. In doing so, it rearranged, consolidated and shortened the Act considerably and of especial significance is the reenactment of Title II as Paragraph (c) of the Act.

As now written, Title II is included in paragraph (c) of the Act and there Congress specifically directed that this Act "shall not be construed to repeal, modify or affect . . . sections 151-166 of Title 29 . . .". Sections 151 to 166 of Title 29 include—in fact they are—the Taft-Hartley Act. Thus by express direction of Congress, the Hobbs Act is not to repeal, modify or affect the Taft-Hartley definition of an unfair labor practice.

In contradistinction to the original wording of the Copeland Act, paragraph (c) of the Anti-Racketeering Act, as now enacted, is not a proviso and it is not an exception. It is a rule of construction, a congressional direction, applicable to the entire Act. It does not mean that Racketeering is prohibited with certain provisos. It does not mean that racketeering is unlawful except when done by certain persons or organizations. It places no restrictions upon the anti-racketeering Act as such to punish racketeers, whomsoever they may be. Instead, it goes to the very definition of racketeering itself and, in its effect here, simply says, racketeering is racketeering, and shall be dealt with as such, union or no union; this definition means robbery and extortion; feather-bedding, to the extent described by Taft-Hartley, is not racketeering but is unfair labor practice, to be dealt with as Congress may from time to time determine; beyond this, feather-bedding except under the Lea Act is not proscribed.

The constitutionality of the Lea Act was upheld by this Court in *United States vs. Petrillo*, 332 U.S. 1, 13, 14. In his specially concurring opinion in that case, Mr. Justice Frankfurter said (P. 13, 14):

> "It would be a usurpation of the legislative authority for us to find that there was no basis in reason for the judgment of Congress that the public interest called for legislation to deal with what is colloquially

called 'feather-bedding' in connection with the Broadcasting business. Beyond that it is not our province to go."

As Senator Taft pointed out, before going further in passing legislation in respect to feather-bedding, Congress wanted to wait and see what happened to the Lea Act. Since then, though the Lea Act has been upheld, Congress has taken no further action on the subject. If legislation in this field is needed, it should be obtained from Congress, not by judicial construction.

To answer the question formulated by the Government in this case in the affirmative will be not only to affect and modify the provisions of Taft-Hartley on feather-bedding, but to repeal it outright, notwithstanding the congressional mandate, as set out in paragraph (c) thereof, on construction of the Anti-Racketeering Act:

Such too, we think, was the reasoning of the District Court in saying (R. 14) "a proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the indictment."

E.

That the Act is aimed against robbery and extortion affecting Interstate Commerce and at force, violence and fear, not directly, but only as elements of the offenses of robbery and extortion is further shown by careful comparison of the three successive Anti-Racketeering Acts, those of 1934, 1946 and 1948.

In the Copeland Act of 1934 (P. 38 of Appendix) although the terms "robbery" and "extortion" were not included, sub-section (a) of Section 420a, contained among other things, a definition of common law robbery, and sub-section (b), words defining extortion. Sub-section (c) of that

Act made it a felony to commit or attempt to commit acts of physical violence "in furtherance of a plan or purpose to violate sub-sections (a) or (b)." Thus the Act proscribed violence in or in connection with the other offenses named but it did not make it applicable to violence and attempts at violence directly affecting commerce apart from robbery or extortion.

In language even clearer, this same limitation was continued in the Hobbs Act of 1946, (Appendix P. 30). After defining the terms "robbery" and "extortion" in Section 1(b)(c) the Act provides in Section 2 as follows:

> "Whoever in any way or degree obstructs, delays or affects commerce, or the movement of any article or commodity in commerce, by robbery or extortion, *shall be guilty of a felony.*"

The language of Section 5 of the Amendment, is:

> "Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall *be guilty of a felony.*"

Not the use of violence or threats of violence to violate section 1(a), that is, to affect commerce, but to violate section 2—in other words, as part of or in support of the commission of robbery and extortion where they affect commerce—is the length and breadth of the proscription of violence and threats thereof in this Act.

If, in the Hobbs Amendment, Congress had intended to make violence the gist of the offense, instead of "robbery" and "extortion", this might easily have been accomplished by rewriting Sub-section (c) of Section 420a of the Copeland Act, in addition to eliminating the provisions as to wages paid by a bona fide employer to a bona fide employee. This, however, it did not do. On the contrary, it for the first time introduced the words "robbery" and

"extortion", designating them as felonies, into the statute and, more than that, reenacted Sub-section (c) of Section 420a of the Copeland Act into Section 5 of the Hobbs Act of 1946, expressly limiting the scope of violence or threats of violence as ingredients of the crimes of robbery and extortion.

Pertinent here is the language of Representative Hobbs (Cong. Rec. supra, P. 11912):

> "The reason that some of you who voted for the Copeland Act are against this bill is because you know it is so clearly expressed that it will do the job it is meant to do, which is to prevent interference with interstate commerce by robbery or extortion. That is all we are shooting at."

1 U.S.C. sec. 204(a) is also applicable:

> "(a) United States Code . . . whenever titles of such code have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States."

As applied in *Wong Yang Sung vs. McGrath*, 339 U.S. 33, 52; and *United States vs. Grainger*, 346 U.S. 235, 248: "Codification contemplates, implies and produces continuity of existing law in clarified form rather than its interruption." Thus, the Codification of 1948 is to be interpreted by reference to the original enactment.

The codification of 1948 produced no such fundamental change in the law as that for which the Government contends; it did not abolish *mens rea* as a necessary element of the crime; the Act is still an Anti-Racketeering Law; it is not a mere anti-violence act; and the criminal intent to rob or extort is still necessary. Involved here is not just a regulatory statute but an Act proclaiming an

Kemble demanded retroactive pay for the work completed without him, and as far as appears, without any member of his Union ever having been near the job. As to that work, not even a tender of standby labor was involved. There is no such allegation in the indictment now before this Court. There is not even an implication here that defendants or either of them sought to be paid, or to have anyone else paid, for work already done by others. This factual difference and this alone is enough to distinguish the cases and it is an important distinction under any view of the statute.

CONCLUSION TO PART II

In conclusion, we are not unmindful of the opinion by Chief Justice Taney in the case of *Aldridge et al vs. Williams*, 3 How. 9:

> "In expounding this law, the judgment of the court cannot, in any degree, be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

In the instant case, however, the statements of congressmen, the report of the Congressional Committee, the lan-

guage of the Act itself, the particular words used, other laws on the same subject, the history of the times in which the Act originated and was passed all unite to show that without the evil intent to rob or extort, there is no crime under this Act.

CONSTITUTIONALITY

In presenting the aforesaid arguments, appellees have not abandoned their original contention that the judgment of the District Court was based upon a consideration of the evidence as well as upon the court's interpretation of the statute, and the findings by the District Court, upon the constitutional question.

The interpretation of the Act which the Government seeks to have this Court place upon it would be unconstitutional for the reasons that—

(1) It would be in violation of Article I, Section 1 of the Constitution of the United States, because it would require this Court to exercise legislative powers;

(2) It would be in violation of the Fifth Amendment because it would deprive the defendants of their liberty or property or both without due process of law; and

(3) It would be in violation of the Sixth Amendment because it would subject the defendants to criminal prosecution without being informed of the nature and cause of the accusation.

Such a construction would write into the law such uncertainties and conjecture as to remove it from the pale of reason.

infamous crime. *Morissette vs. United States*, 342 U.S. 246.

In the 1948 Codification of the Hobbs Act of 1946, Congress reenacted Sections 2 and 5 of the 1946 Act as Section (a) of the 1948 codification, and added a specific definition of the terms "robbery" and "extortion". It did not include any definition of the terms "force and violence" except as these terms applied to extortion or robbery.

CONCLUSION TO PART I.

Thus, because of Acts of Congress *in pari materia*; because the Hobbs Act does not cover feather-bedding or attempts at feather-bedding; because it is unreasonable to suppose that Congress ever intended such offense to be treated as one of the most infamous felonies in federal criminal law; because the indictment here charges no offense in the category of gangster operations of the type against which the Anti-Racketeering Act was aimed; because the Act should not be construed to embrace by implication the sort of conduct which Congress has clearly shown it was never intended to include; and above all, because the requirement of *mens rea* has never been abolished but remains as an essential element of the crime defined in the Act, the judgment of the District Court should be affirmed.

---

2. The federal Kickback Act (18 U.S.C. §74) is also illustrative of the point. Under this Act, for the crime of obtaining a kickback (extortion) by "force, intimidation or by any other means whatsoever", the penalty of a fine of "not more than $5,000 or imprisonment for not more than five years, or both" is far less than that of the Hobbs Act. Compare also other penalties in the chapter on Extortion and Threats (18 U.S.C. Ch. 11, Sections 871-877).

II.

ANSWER TO GOVERNMENT'S ARGUMENT

Appellees make three initial observations.

First, we reiterate that approximately half of the appellant's brief is devoted to support of a proposition upon which there is no controversy, namely, that the Anti-Racketeering Act proscribed racketeering, union or no union, whether there be an employer-employee relationship or not, and makes no exception.

Second, the appellant in its argument has fallen into an error—an error into which, indeed, it is difficult to avoid falling in a case of this kind—the error of stating and arguing about facts from other cases decided on evidence whereas the case in point is not to be decided upon evidence (except such as the District Court sets out in his Memorandum of Opinion (R. pp. 14-16) but upon pleadings or the common law record only (*Bishop's New Crim. Pro.* Sec. 1285; *1 Chitty Crim. Law* 661; *Carter vs. Bennett*, 15 How. 354; *United States vs. Zisblatt*, 172 F. 2d 940)—pleadings which, moreover, do not include nor even so much as imply the existence of facts such as those recited by the Government,—the error of arguing facts *de hors* the record.

Third, by the "question presented," the Government seeks to impute the words "imposed, unwanted, superfluous and fictitious" as part of the Act. Nowhere in the statute are these words to be found. Neither are they defined there. In the case of *United States vs. Petrillo*, 332 U.S. 1, there was division of opinion in this Court as to whether the words "in excess of the number of

employees needed by such licensee to perform actual services," were sufficiently clear, definite and certain as to be constitutional under the Fifth Amendment. We submit that the words, "in excess of the number needed to perform actual services" are clarity, definiteness and certainty to the nth degree as compared with the expressions "imposed, unwanted, superfluous and fictitious" used in the indictment in this case, and that to say that they are within the statute is a matter of speculation purely.

For the reasons heretofore set forth, they are not within the purview of the Act. As has been stated in this brief (P. 11) there are no federal crimes by imputation and construction, and this is particularly true where the congressional intent is plain as it is here.

Language of the Court in *Kordel vs. United States*, 335 U.S. 345-349, seems especially applicable in this connection. The Court said:

> "A criminal law is not to be read expansively to include that which is not plainly embraced within the language of the statute (citing cases), since the purpose fairly to apprise men of the boundaries of the prohibited action would then be defeated . . . . But there is no cannon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions from or loopholes in it."

Common sense dictates that Congress did not intend to treat a union representative or his union seeking a job for a member of that union at common laborer's wages, and no more, as an infamous criminal who ought to be subject to a twenty year sentence in the penitentiary, a $10,000 fine or both, even if paragraph (c) were not in the Act. But that paragraph forecloses any doubt about the matter. The scope of the Act should not be

expanded in effect to eliminate that section, as the interpretation here sought by the Government would surely do. And as "strained and technical constructions" should not be resorted to for the purpose of creating loopholes, neither should they be resorted to in order to create a crime. If Congress wishes to proscribe these things apart from robbery and extortion, as the Congress has done in the Lea Act, with an appropriate penalty, it may do so.

A.

THE GOVERNMENT'S CITED CASES

What of the cases cited by the Government? They total an even thirty. But eight only of them arise under one or another of the successive Anti-Racketeering Acts. Three were under the original or Copeland Act of 1934; five are under the so-called Hobbs Act.[3] But not one of the eight was decided on pleadings or the common law record, as this case comes to this Court, if this Court assumes jurisdiction. In other words, all eight were decided on a review of the actual evidence either by or via a Circuit Court of Appeals. All of them, moreover, involved either one or both of two factors not present in the instant case, namely, (1) Conspiracy (here questions of conspiracy are not involved because the defendants were acquitted of conspiracy), and (2) extortion for the benefit of the extorter (here neither defendant sought *or is charged with seeking* anything whatsoever for himself or for his personal benefit.)

Most strenuously argued are the *Local 807* case (315 U.S. 521; 86 L. ed. 1004) and the *Kemble case* (198 F. 2d 889). The Government's interpretation of the *Local 807* case, as to intent, we submit, far from being supported by the dissenting opinion of Mr. Chief Justice Stone and the subsequent Act of Congress as contended by the Government (Footnote 5 of Government's Brief P. 18) is actually negated by both; and the *Kemble case*, in which the indictment was never questioned at any stage is so different from the present case as to be clearly distinguishable.

---

3. In one of these, *Nick v. United States* (192 F. 2d 666) the payment or demand was for $6,500.00; in another, *United States v. Verlack*, 225 F. 2d 665, for $7,500.00; in *Bianchi v. United States*, 219 F. 2d 42, $15,000.00; *Callanan v. United States*, 223 F. 2d 171, $28,000.00; *Hallihan v. United States*, 213 F. 2d 850 $60,000.00; *the Campagna case*, 146 F. 2d 524, $1,100,000.00. In the main they did not involve even a pretense of wages.

B.

THE LOCAL 807 CASE

In regard to the *Local 807* case and the Act of Congress following it (Hobbs Act P. 38 of Appendix) appellant says:

> "... motive in this sense is not an element of the offense under the Hobbs Act, which prohibits the use of threats and violence affecting interstate commerce to exact money regardless of the ultimate objective or motive of the robbery or extortion."
>
> "The removal of the 1934 Act's Section 2(a) exceptions by the Hobbs Act renders proof of the ultimate 'objective' of the defendant irrelevant. If threats and violence are used in connection with a plan or purpose to extort affecting interstate commerce, the crime is completed. The scienter factor is satisfied by proving '*the intention to use force and violence on the victim and the intention that the victim shall pay because of it.*'" (Emphasis added.) (pp. 16-17 U.S. Brief.)

That was a conspiracy case. The language underscored above is from Chief Justice Stone's dissent. It does not support the appellant's contention. The last part of the quotation contradicts appellant.[1] Throughout that opinion, moreover, the Chief Justice assumed that in order that a defendant be found guilty under the Act, such defendant must have had a motive to seek illegal gain as defined in the Act.

---

1. Justice Stone did not say just what the Government quotes. *What he said was this:*

> "The jury was told that to convict it must find conspiracy or agreement by respondents to violate the statute and that they must have the purpose or intention to commit the crime which it defined. As I have said, the intention to commit the offense includes the intention to use force and violence on the victim and the intention that the victim shall pay because of it."

In his dissenting opinion, Chief Justice Stone said: (p. 539.)

"Respondents, who are members of a labor union, were convicted of conspiracy to violate the Anti-Racketeering Act. They, or some of them, lay in wait for trucks passing from New Jersey to New York, forced their way into the trucks and by beating the drivers procured payments *to themselves* . . ."

Again, P. 540:

"There is abundant evidence in the record from which the jury could have concluded that respondents, or some of them, conspired to compel by force and violence the truck drivers or their employers to pay the sums of money *to respondents or* some of them: . . ."

Further, P. 543:

"Upon any theory of the meaning of the statute, it was not necessary for the government to show that it was the object of the conspiracy that *all the conspirators should receive payments of money*. They would be equally guilty if they had conspired to procure the payment to some." (Emphasis added.)

Thus even the dissenting judge assumed that before a defendant might be found guilty under the Act, it must be shown that he had the evil heart to reap illicit gain by robbery or extortion.

More than that, we submit the Government is in fundamental error in regard to the *Local 807* case in another respect. This Court did not rule in that case, that racketeering was proscribed by the Act for every one except labor unions and labor union members. It decided simply that, under the particular proviso of the Act, applying the *then current* definition of the employer-employee relationship, the payment of wages by a bona fide employer to a bona fide employee was not racketeering. In other words, it dealt not with the question of who might or might not

commit the crime but with that of what the crime was. Indeed, as Mr. Justice Byrnes wrote at page 534 of the majority opinion, "We do not mean that an offer to work or even the actual performance of some service necessarily entitled one to immunity under the exception."

Similarly, in removing the controversial words, Congress did not say, as the Government argues, that unions and union members heretofore exempt from this Act are no longer exempt but, rather, that the definition of the crime of racketeering is no longer subject to the proviso. Beyond that, instead of expanding, Congress actually tightened the Act by, among other things, (1) for the first time inserting and defining the two words, "robbery" and "extortion", (2) by substantially reenacting Sub-section (c) of Sec. 420a of the Copeland Act of 1934, as Section 5 of the Hobbs Act of 1946, and (3) by making Title II (paragraph (c) of the Codification of 1948) more definite than it had been.

By so doing, far from removing the element of *scienter* as the Government contends, the Congress thereby emphasized its importance as an element of the crime beyond its application merely to force and violence.

In both "robbery" and "extortion" criminal intent at common law was, and, by statutory construction now is, a necessary element of the crime. Both are crimes of the larceny category. "Robbery," says Clark on page 127 of his Summary of American Law, 1947, Edition, "is a common-law felony consisting of a larceny from the person committed by the open use of force or by intimidation." "Extortion," at common law, was the demanding and obtaining of money or other property, with the consent of

---

5. The government in the vigor of making the contention is somewhat nebulous. For example, on page 14 of its Brief, appellant states: "The extortionist is unjustly enriched . . . whatever his rationale . . ."

the victim, induced by force, threats or any other undue exercise of power as well as by color of office. *United States vs. Sutter*, 160 F. 2nd 754, 756.

In any case, however, criminal intent is a necessary element. To constitute robbery the taking must be *animo furandi* 46 Am. Jur. 143, 310. Such, generally, is the rule also as to extortion. 22 Am. Juris. 237, Sec. 13. Particularly was it true in the New York decisions applying that state's Anti-Racketeering Act from which the Hobbs Act is an adaptation.

Section 850 of Article 80 of the New York Consolidated Laws defines Extortion as follows:

> "Extortion is the obtaining of property from another . . . with the consent, induced by the wrongful use of force or fear, or under color of official right."

As Representative Hobbs said, respecting his amendment, "The definitions in this bill are copied from the New York Code substantially," 91 Cong. Rec. 11900. Others concurred, 91 Cong. Rec. 11900-11906.

In New York, the intention to rob or extort was an essential element of the crime. *People vs. Koerder*, 1926, 244 N.Y. 147, 153-154; 155 N.E. 79, 82; *People vs. Garry*, 1933, 237 App. Div. 769, 263 N.Y.S. 288; and *People vs. Gassman*, 1943, 182 Misc. 878, 885-886, 45 N.Y.S. 2nd 709, 715, affirmed 1946, 295 N.Y. 254; People v. Vitusky, 1913, 155 N.Y. App. Div. 139, 154.

Thus at the time of the adoption by Congress, intent was clearly an element of either offense in New York. Apropos is the language of this Court in the case of *Metropolitan R. R. Co. vs. Moore*, 121 U.S. 558, 572; 30 L. ed. 1022, in construing the new statutory provisions establishing a judiciary in the District of Columbia:

> ". . . these provisions are to be construed in the

sense in which they were understood at the time in that system from which they were taken. In other words, we think that Congress adopted for this purpose the law of New York as it was understood in New York. *McDonald vs. Hovey*, 110 U.S. 619."

To say that Congress, by eliminating the words "the payment of wages by a bona fide employer to a bona fide employee" did away with the element of intent, save intent to commit acts of force, violence and fear, is to ignore the further fact that Congress inserted the words "robbery" and "extortion" as such. The debate as reported by the Government in its brief would indicate that these words were not surplusage but of uppermost consideration by the Congress in passing the Hobbs Act. The bill was not debated in the Senate. Vol. 91 of the Cong. Rec. 11899-11922, 79th Cong. 1st Ses. carries the record in the House. We have previously cited statements from Representative Hobbs, Representative Summers, and Representative Whittington, all stressing robbery and extortion. To these may be added others.

The matter was summed up by Representative Robsion at p. 11906 in the following language:

> "This bill merely makes clear robbery and extortion. . . . . So it is up to the Government to prove, beyond a reasonable doubt, that the person charged under this anti-racketeering bill has committed either robbery or extortion before such person can be convicted."

There are, however, perhaps even more cogent reasons why the Government's contention in this respect is erroneous. In the case of *Morissette vs. United States*, 342 U.S. 246, this Court, differentiating between regulatory statutes and those incorporating common law crimes, said:

> "Stealing, larceny, and its variants and equivalents, were among the earliest offenses known to the

law that existed before legislation; they are invasions of rights of property which stir a sense of insecurity in the whole community and arouse public demand for retribution, the penalty is high and, when a sufficient amount is involved, the infamy is that of a felony, which, said Maitland, is . . . 'as bad a word as you give to man or thing.' State courts of last resort, on whom fall the heaviest burden of interpreting criminal law in this country, have consistently retained the requirement of intent in larceny type offenses. . . .

"Congress, therefor, omitted any express proscription of criminal intent from the enactment before us in the light of an unbroken course of judicial decision in all constituent states of the Union holding intent inherent in this class of offense, even when not expressed in the statute. . . .

"And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such case, absence of contrary direction may be taken as satisfaction with widely accepted definitions not as a departure from them."

It has been pointed out heretofore that extortion is a crime of the larceny category. On this matter, too, the Congressional Record of debate is significant. Thus this colloquy on P. 11901, 91 Cong. Rec.:

Representative Walter: "In connection with the question asked by the gentleman from Pennsylvania, the gentleman should point out that the taking must be an unlawful taking."

Representative Hobbs, interjecting: "Certainly, sir. Thank you."

Later on, Represenative Walter, emphasizing the point, P. 11908: ". . . I call the gentleman's atten-

tion to the fact that a mere threat does not constitute a crime. There must accompany that threat an unlawful taking."

And so, at a time when the *Morissette* case was years in the future, Congress itself was neither unmindful nor uninformed of the principles involved. Managers of the bill clearly stated that the taking itself must be unlawful to constitute to crime.

C.

THE KEMBLE CASE

This leads directly to a consideration of the *Kemble Case*. This is a Circuit Court of Appeals case from the Third Circuit in which, by a divided decision, the judgment of conviction of the defendant, Kemble, was affirmed and that of the defendant Union reversed. Three judges disagreed with the majority. Two judges strongly dissented as to the affirmation and the Chief Judge concurred in part and dissented in part, holding that a new trial should have been granted for reasons other than those stated by the other two dissenting judges but that the judgment of acquittal of the Union was correct. The Government contends that this case "established a situation analogous to the instant case" (U. S. Brief, P. 33). With that, for two specific reasons, we cannot agree.

First, that case was decided on a review of the evidence. The sufficiency of the indictment was never questioned either as a pleading in itself or with relation to the statute, but the decision turned upon the proof. Apparently, defendants felt so sure of their position under the Act that they offered no evidence in defense at all. Here, on the other hand, the indictment and its sufficiency under the Act has been strenuously challenged from the start.

Second, the facts of evidence reviewed in that case are in at least one essential point altogether different from anything charged in the indictment here. There the defendant, Kemble, did not come upon the scene until after a substantial portion of the work had been completed. That was not true here nor is it alleged to be. There payment was sought for work already done by others. In effect,

As Mr. Justice Reed aptly said in his dissenting opinion in the Petrillo case (*United States vs. Petrillo*, 332 U.S. 1, 16):

> "This criminal statute is the product of legislation directed at the control of acts deemed evil by Congress. It is one of the many regulatory acts that legislative bodies have passed in recent years to make unlawful certain practices in the field of economics that seemed contrary to the public interest. These statutes made new crimes, deeds theretofore not subject to punishment, fall within the general scope of their prohibition. Common experience has not created a general understanding of their criminality. Consequently in order to adequately inform the public of the limitations on conduct, a more precise definition of the crime is necessary to meet constitutional requirements.
>
> "Anglo-American law does not punish citizens for violation of vague and uncertain statutes. There is no place in our criminal law for acts defined as detrimental to the interests of the State. A statute is invalid when 'so vague that men of common intelligence must necessarily guess at its meaning' . . .
>
> "This is a criminal statute. The principle that such statutes must be so written that intelligent men may know what acts of theirs will jeopardize their life, liberty or property is of importance to all."

See also quotation from *Connolly vs. General Construction Co.*, 269 U.S. 391 on P. 45 of this Brief.

How could the defendant, Green, for example, in pursuance of his duties as a union representative in demanding that the contractors, Terry and Wright, employ swampers as was customary and agreed to by contractors and laborers in the community, be expected to know that such a demand, even when force, violence and fear might be employed to secure compliance, was a violation of the Hobbs Act subjecting him to twenty years in the penitentiary, or a $10,000.00 fine, or both? Indeed, if he read

the Act in its entirety, including not only the definitions but also paragraph (c), how could he reasonably come to any conclusion other than that such conduct was not embraced by the Act? Without paragraph (c), the language gives him no warning. With that paragraph, it leads him to believe affirmatively that his demand was not covered. This Act is more than vague and indefinite; it is positively misleading. Such an Act cannot be Constitutional.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

ARTHUR M. FITZGERALD,
908 Ridgely Building,
Springfield, Illinois.

SCHAEFFER O'NEILL,
Alton, Illinois.

WILLIAM P. ROBERTS,
908 Ridgely Building,
Springfield, Illinois.

Attorneys for Appellees.

APPENDIX

THE COPELAND ANTI-RACKETEERING ACT

48 Stat. 979; 18 U.S.C. 420(a)-420(e) 1940 Ed.

Penalty Maximum: 10 years in prison; $10,000 fine, or both.

Sec. 420a—Interference with trade or commerce by violence, threats, etc.; penalties.

Any person who, in connection with or in relation to any act in any way or degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, *however, the payment of wages by a bona fide employer to a bona fide employee; or*

(b) Obtains the property of another, with his consent, or induced by wrongful use of force or fear, or under color of official right; or

(c) Commits or attempts to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sub-sections (a) or (b); or

(d) Conspires or acts concertedly with any other person or persons to commit any of the foreging acts, shall, upon conviction thereof, be guilty of a felony and shall be punished by imprisonment from one to ten years or by fine of $10,000, or both.

420d—Same; jurisdiction of offenses.

Any person charged with violating Section 420a of this title may be prosecuted in any district in which any part of the offense has been committed by him or by his actual associates participating with him in the offense or by his fellow conspirators: *Provided*, that no court of the United States shall construe or apply any of the provisions of Sections 420a 420e of this title in such manner as to affect the rights of bona fide labor organizations in lawfully carrying out the legitimate objects thereof as such rights are expressed in existing statutes of the United States.

April 16, 1946

THE LEA OR PETRILLO ACT

60 Stat. 89; 47 U.S.C. Sec. 506.

Penalty Maximum: 1 year in prison; $1,000 fine or both.

Sec. 506 (a) It shall be unlawful, by the use of express or implied threats of the use of force, violence, intimidation, or duress, or by the use of express or implied threat or the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—

(1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or

(2) to pay or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or

. . . . . .

(4) to pay or give or agree to pay or give any money or other thing of value for services in connection with the conduct of the broadcasting business of such licensee, which are not to be performed.

. . . . . .

(d) Whoever wilfully violates any provision of subsection (a) or (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.00, or both

. . . . . .

July 3, 1946

THE HOBBS ACT OF 1946

60 Stat. 420.

Penalty Maximum: 20 years in prison; $10,000 fine, or both.

TITLE I.

60 Stat. 420 Sec. 1. As used in this title—

(a) Defines Commerce.

. . . . . .

(b) The term 'robbery' means the unlawful taking or obtaining of personal property, from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or anyone in his company at the time of the taking or obtaining

(c) The term 'extortion' means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Sec. 2. Whoever in any way or degree obstructs, delays, or affects commerce, or the movement of any article or

commodity in commerce, by robbery or extortion, shall be guilty of a felony.

Sec. 3. Whoever conspires with another or with others, or acts in concert with another or with others to do anything in violation of Section 2 shall be guilty of a felony.

Sec. 4. Whoever attempts or participates in an attempt to do anything in violation of section 2 shall be guilty of a felony.

Sec. 5. Whoever commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of section 2 shall be guilty of a felony.

Sec. 6. Whoever violates any section of this title shall, upon conviction thereof, be punished by imprisonment for more than twenty years or by a fine of not more than $10,000, or both.

"TITLE II.

"Nothing in this Act shall be construed to repeal, modify, or affect either section 6 or section 20 of an Act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, or an Act entitled 'An Act to amend the judicial code and to define and limit the jurisdiction of the courts in equity, and for other purposes,' approved March 23, 1932, or an Act entitled 'An Act to provide for the prompt disposition of disputes between carriers and their employees and for other purposes,' approved May 20, 1926, as amended, or an Act entitled 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, to create a National Labor Relations Board, and for other purposes,' approved July 5, 1935."

June 23, 1947

TAFT-HARTLEY ACT

61 Stat. 140; 29 U.S.C. Sec. 158.

Penalty Maximum: (See Enforcement Provisions set out below establishing exclusive jurisdiction).

Sec. 8(b) (6) of the Taft-Hartley Act (Labor Management Relations Act of 1947) (60 Stat. 140) amended the National Labor Relations Act by, among other things, adding thereto the following (29 U.S.C.A. Sec. 158):

Sec. 8 . . . . . .

(b) It shall be an unfair labor practice for a labor organization or its agents—

. . . . . .

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed. . . . .

PREVENTION OF UNFAIR LABOR PRACTICES.

T. 29 U.S.C. 160 (a): Sec. 10 (a). The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce . . . . . .

(e) The Board shall have power to petition any circuit court of appeals of the United States, or, if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, ...

The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review. . . .

June 25, 1948

CODIFICATION OF HOBBS ACT

62 Stat. 793; 18 U.S.C. 1951.

Penalty Maximum: 20 years in prison; $10,000 fine or both.

18 U.S.C. 1951. (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

. . . . . .

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, Sections 52, 101-115, 151-166 of Title 29 or sections 151-188 of Title 45.